TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~291.~~ 97

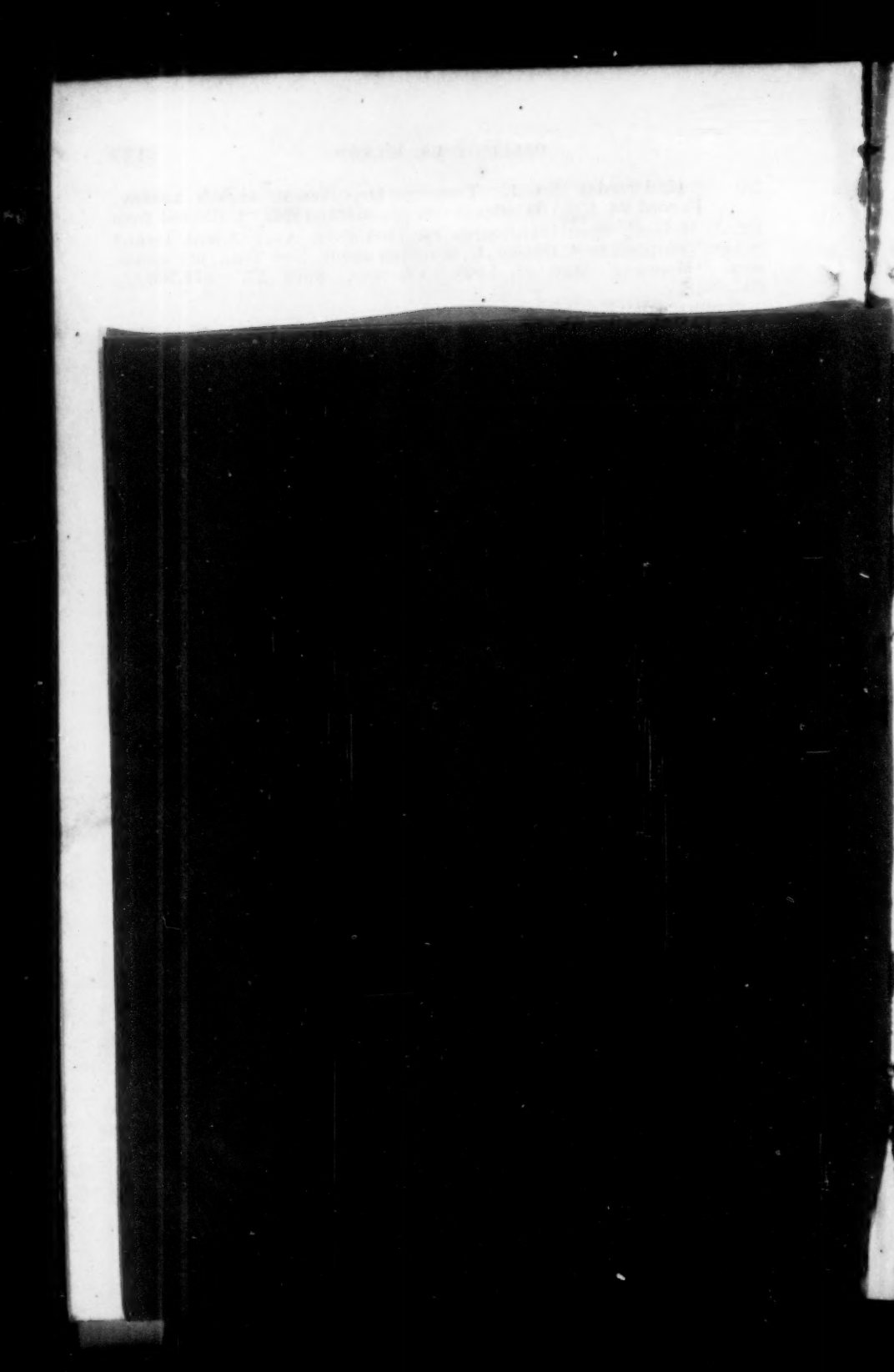
THE SUSQUEHANNA AND WYOMING VALLEY RAILROAD AND COAL COMPANY, APPELLANTS,

vs.

R. M. BLATCHFORD AND J. B. NEWMAN, TRUSTEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED NOVEMBER 26, 1869.



21.

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Among the rolls, records, and judicial proceedings of the circuit court of the United States in and for the western district of Pennsylvania may be found the following words and figures, to wit:

1 In the circuit court of the United States for the western district of Pennsylvania, in equity.

To the judges of the circuit court of the United States for the western district of Pennsylvania:

Richard M. Blatchford, a resident of the city of New York, in the State of New York, and a citizen of said State of New York and of the United States, and John B. Newman, a resident of the city of Philadelphia, in the State of Pennsylvania, and a citizen of said State of Pennsylvania, and of the United States, trustees, plaintiffs in this suit, and who sue herein solely for the use of Henry Beckett, a resident of Bordentown, in the State of New Jersey, and an alien and a subject of her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, and of Joseph Loyd, a resident of Elizabeth, in the State of New Jersey, and a citizen of said State of New Jersey, and of the United States, bring this their bill of complaint against "The Susquehanna and Wyoming Valley Railroad and Coal Company," a corporation duly created and organized under that name, under and by virtue of the laws of the said State of Pennsylvania, defendants in this suit. And thereupon

2 your orators complain and say, on information and belief, that heretofore, and on the twentieth day of April, in the year of our Lord one thousand eight hundred and sixty, the said defendants, by the name aforesaid, and under their common or corporate seal, executed and delivered to the said plaintiffs an indenture of mortgage, of which the following is a copy:

"This indenture, made the twentieth day of April, in the year of our Lord one thousand eight hundred and sixty, between the Susquehanna and Wyoming Valley Railroad and Coal Company, a corporation duly organized under and by virtue of the laws of the State of Pennsylvania, of the first part, and Richard M. Blatchford, of the city of New York, in the State of New York, and John B. Newman, of the city of Philadelphia, in the State of Pennsylvania, trustees as hereinafter mentioned, of the second part:

"Whereas, at a meeting of the stockholders of said company held at Philadelphia, on the twenty-ninth day of February, A. D. 1860, R. M. Blatchford, esquire, was appointed chairman, and the meeting duly organized, on motion of Isaac S. Loyd, seconded by Charles Gould, it was—

"'*Resolved*, That this company shall and do forthwith duly

3 make and issue their bonds for any sum not exceeding five hundred thousand dollars; that such bonds shall be issued in such sums, payable at such times, with interest, at such rate, and payable in such manner, and be issued on such terms as the president and board of directors of this company may deem expedient; and that the said bonds, principal and interest, shall be secured by a mortgage of the property, real and personal, of this company, (now owned and hereafter to be owned and acquired,) and the corporate privileges and franchises, tolls, rents, and profits thereof, and shall be executed and delivered to trustees for the benefit of the holders of such bonds a shall be so issued, and which bond and mortgage shall be duly issued under the seal of this company, and shall contain all such covenants and provisions as the said president and board of directors may dee[illegible] expedient.

"'*Resolved*, That the president and board of directors of this company be, and they are hereby, authorized and requested to carry the
4 foregoing resolution into effect.'

"And whereas, at a meeting of the president and board of directors of the said company, held at the office of the company in New York, on the fifth day of March, A. D. 1860, the following resolutions wer adopted:

"'*Resoled*, That, in pursuance of the resolutions of the stockholders of this company, passed on the twenty-ninth day of February, A. D. 1860, this company shall and do forthwith duly make and issue their bonds for the sum of five hundred thousand dollars; that such bonds shall be five hundred in number, (numbered from one to five hundred, inclusive,) each for one thousand dollars, and shall be made payable on the first day of December, ano Domini eighteen hundred and seventy-five, (1875,) with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first day of the months of June and December in each year; that such bonds shall be convertible into the stock of said company at par.

"'*Resolved*, That, to secure the payment of said bonds, prin-
5 cipal and interest, this company shall and do forthwith make, execute, and deliver to Richard M. Blatchford, of the city of New York, and State of New York, and John B. Newman of the city of Philadelphia, in the State of Pennsylvania, trustees, a mortgage of the property, real and personal, of this company, (now owned and hereafter to be owned and acquired by them,) and all the tolls, rents, issues, incomes, and profits thereof, and the corporate privileges and franchises thereof.'

"And it was also resolved that the bond hereinafter recited, and this mortgage, be and the same were thereby approved.

"And further:

"'That the president of this company be, and he is hereby, authorized and requested to affix the seal of this company to each of said bonds (to be duly attested by the treasurer) and his signature as president thereto respectively, and to issue the same; and that said president be, and he is hereby, authorized and requested duly to seal with the corporate seal of this company, to be duly attested by the treasurer, and to
6 sign as president, the said indenture of mortgage in trust and as the act and deed of this company, and for and on behalf thereof duly to diliver and acknowledge the same so as to be duly recorded.'

"And whereas the said 'The Susquehanna and Wyoming Valley Railroad and Coal Company,' in pursuance of the said resolutions, have issued under their corporate seal five hundred bonds or single obligations, with interest coupons attached, numbered from one to five hundred inclusive, each of the tenor and form following, to wit:

"'UNITED STATES OF AMERICA.

"'No.

"'First mortgage seven per cent. convertible bonds, secured on real estate at Scranton, Luzerne County, State of Pennsylvania. The Susquehanna and Wyoming Valley Railroad and Coal Company hereby acknowledge themselves to be indebted to in the sum
7 of one thousand dollars, lawful money of the United States of America, which sum they promise to pay to , or to the

bearer hereof, at the office of the company, in the city of New York, on the first day of December, in the year one thousand eight hundred and seventy-five, with interest thereon, at the rate of seven per centum per annum, payable semi-annually on the first day of the months of June and December in each year, on the delivery of the annexed interest warrants therefor. The holder of this bond is entitled to the security of a mortgage made by said company (bearing even date herewith) of all the franchises of said company, and the property, real and personal, thereof, as herein mentioned, duly authorized by resolutions of the stockholders and of the president and board of directors of said company, duly executed and delivered by said company to Richard M. Blatchford and John B. Newman, in trust, to secure the full and final payment of bonds of said company to be issued to the amount of five hundred thousand dollars, lawful money of the United States, as by said mortgage, duly recorded at Luzerne County, will appear.

8 "'And the said holder has the right, at any time before the first day of June, in the year 1875, to convert the principal sum hereby promised to be paid into the capital stock of the said company at par on surrendering this bond with the interest warrants not then due annexed.

"'In witness whereof the said company have caused this bond to be signed by their president and treasurer, and their corporate seal to be affixed thereto, at their office at Scranton aforesaid, the twentieth day of April, A. D. 1860.

"'[L. S.] *President.*
Treasurer.

"'We hereby certify that the above-named company (obligors) have executed and delivered to us as trustees the mortgage in the said obligation recited, and that the foregoing is one of the bonds described in and secured thereby.

Trustees.'

"Now this indenture witnesseth that the said The Susquehanna and Wyoming Valley Railroad and Coal Company, as well in consideration of the premises and for the better securing payment of the said

9 bonds, with the interest which may accrue thereon, as of the sum of one dollar lawful money of the United States, unto them well and truly paid by the said Richard M. Blatchford and John B. Newman, at the time of the execution hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, assigned, transferred, and set over, and by these presents (in pursuance and execution of the power and authority in them vested by the said recited resolutions and of all or any of the several acts of the legislature of the State of Pennsylvania and of all and every power and authority in them in any wise vested, and in this behalf enabling) do grant, bargain, sell, alien, enfeoff, release, and confirm, assign, transfer, and [and] set over unto the said Richard M. Blatchford and John B. Newman, and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor—

10 "All that certain piece or parcel of land situate, lying, and beeing in the township of Lackawanna, county of Luzerne, and State of Pennsylvania, which said tract or parcel of land is bounded and described as follows, viz: Beginning at the Lackawanna River, at the township line of Providence and Lackawanna; thence south fifty-two degrees thirty minutes east eight hundred and ten rods to a hem-

lock tree; thence south thirty-seven degrees west seventy-six and a half rods to a post; thence north fifty-two degrees thirty minutes west three hundred and forty perches; thence north sixty degrees west thirty-three perches; thence north fifty-two degrees thirty minutes west one hundred and fifty-seven and a quarter perches to a stone corner; thence south thirty-seven degrees west thirty and a half perches to a white-oak tree; thence north fifty-three degrees thirty minutes west two hundred and fifty-four perches to a post; thence south thirty-six degrees thirty minutes west thirty-two and three-tenths perches to a stone corner; thence north fifty-three degrees thirty minutes west fifty perches to a post; thence north forty-seven degrees east ninety-
11 nine and a half perches; thence north nineteen degrees west twenty-one perches to the Lackawanna River; thence by the said river by is different courses to the place of beginning, containing four hundred and sixty-seven acres and one hundred and fifty-eight perches, be the same more or less.

"Also, all that lot, piece, and parcel of land situate in the township of Lackawanna, Luzerne County, and State aforesaid, bounded and described as follows, viz: Beginning at a stake and stones corner; thence south fifty-four and a half degrees east two hundred and fifty-four perches to a corner white-oak tree; thence south thirty-five degrees and a half west about thirty-two perches to the line of lands formerly of Silas Coray; thence north fifty-four and a half degrees west along the said land, late of Coray, two hundred and fifty-four perches to a corner; and thence north thirty-five and a half degrees east thirty-two perches or thereabouts to a corner, the place of beginning, containing fifty acres of land or thereabouts, be the same more or less.

12 "Also, all that certain tract or piece of land situate in the township of Lackawanna, bounded and described as follows, to wit: Beginning at a white-oak sapling, on the bank of the Lackawanna River, at the northeast corner of the Coray lot; thence south fifty-one degrees thirty minutes east one hundred and six perches to stake and stones for a corner; thence north forty-seven degrees thirty minutes east ninety-two and five-tenths perches to a hemlock for a corner; thence north eighteen degrees and a half west twenty-one and six-tenths perches to the Lackawanna River; thence down the said river, by the courses thereof, to a point in the said river opposite the place of beginning; thence to the place of beginning, containing forty-five acres and fifty-four perches, more or less.

"Also, all that certain tract or piece of land situate in Pittston Township, county of Luzerne, and State aforesaid, beginning at the corner near or at the intersection of a cross-road leading from the main road down the Lackawanna River from near the house of Richard H.
13 Brown, with the old township road leading to Pittston Village; thence along the said road south forty-three degrees fifteen minutes west sixty-four and two-tenths perches to the Searls lot; thence north forty-nine degrees west two hundred and fourteen perches to the Lackawanna River; thence by the courses of the said river and up the same sixty-four perches; thence south forty-nine degrees east two hundred and nine perches to the beginning, containing eighty-four acres and thirty-eight perches, it being the lot on which Richard Brown resides; being the same premises which Henry Beckett and his wife, by indenture dated the nineteenth day of July, A. D. 1859, intended to be recorded, granted, and conveyed unto the said 'The Susquehanna and Wyoming Valley Railroad and Coal Company,' their successors and assigns, forever, excepting and reserving, as respects the said tract of

eighty-four acres and thirty-eight perches, as is excepted and reserved in and by a certain indenture bearing date the sixteenth day of August, A. D. 1855, executed by Richard H. Brown to Samuel Smith, and
14 recorded in Luzerne County aforesaid, in deed book No. 18, page 172.

"Also, all and singular the lands, tenements, and hereditaments conveyed by the said Henry Beckett to the said 'The Susquehana and Wyoming Valley Railroad and Coal Company,' by the said indenture of the nineteenth day of July, A. D. 1859, and all steam-engines, machinery, and implements of mining, boats, and all other matters and things used and employed in working the mines and carrying coal or in any wise appertaining thereto.

"And, also, all that certain tract of land situate and being in the borough of Scranton, (late Providence Township,) Luzerne County, and State aforesaid, bounded and described as follows, to wit: Commencing at a corner in Penn avenue, (established by proceedings in partition in the court of common pleas of the said county between the late Elisha Hitchcock, deceased, and the Lackawanna Iron and Coal Company,) near the intersection of Penn avenue and Vine street, (as appears by the plot of the said borough;) thence in a southwesterly course, on the line of division between the said Hitchcock and the said iron
15 and coal company, (as appears by the said proceedings in partition,) eighty-six rods to a post for a corner, (made and established by the said partition;) thence south fifty-four and a half degrees east, as originally run to another corner, now in the enclosure of Joseph Scranton, made by the said proceedings in partition; thence in a northeasterly course on a line made by the said partition forty-three rods; thence south fifty-four and a half degrees east, as originally run and established by the said partition to the line of Providence Township, as established at the date of the original official survey; thence by the said township line north thirty-five and a half degrees east forty-three rods to the easterly line of certified lot number thirty-five, (35;) thence by the said original line north fifty-four and a half degrees west, as originally run to a point where the said line intersects the centre of Adams avenue, as per the plot of the avenues and streets of the said borough; thence westerly along the centre of Adams avenue to the centre of the intersection of the said avenue with Mulberry street; thence
16 along the centre of Mulberry street in a northerly course to the centre of the intersection of Mulberry street and Washington avenue; thence in a westerly course along the centre of Washington avenue two hundred and ninety feet to a point that will intersect the division line betwen lots numbered six (6) and seven (7) in block number one hundred and one (101) and the division line between lots numbered six and seven in block number forty-nine (49); thence in a northerly course along the division line between the said lots to the centre of an alley sixteen feet wide, extending from Vine to Mulberry streets, and from Mulberry to Linden streets, dividing in equal parts blocks numbers forty-nine and fifty; thence in an easterly course along the said alley's centre to the original easterly line of said certified lot number thirty (35;) thence north fifty-four and a half degrees west along the said line to the place of beginning, containing about one hundred and ninety-five acres, more or less; being the same premises which the said Henry Beckett and wife, by indenture dated the nineteenth
17 day of July, A. D. 1859, intended to be recorded, granted, and conveyed unto the said 'The Susquehanna and Wyoming Valley Railroad and Coal Company,' their successors and assigns, forever, ex-

cepting therefrom certain lots conveyed by Elisha Hitchcock to his son Ebenezer.

"Also, other reservations particularly mentioned and described in a deed from Elisha Hitchcock to George Sanderson, dated the fifth day of April, A. D. 1856, recorded at Wilkesbarre, in deed book, volume 66, page 48, it being intended hereby to convey the whole tract conveyed by a certain Hitchcock to George Sanderson, with the reservations therein made, containing then two hundred and twenty-one acres, except so much of the said tract as is reserved by a deed from George Sanderson and wife to Henry Beckett, dated the twentieth day of June, A. D. 1859, therein particularly described, and such lots as the said Sanderson had theretofore contracted to sell, a schedule of which is to 'the said deed from Sanderson and wife to the said Henry Beckett annexed, and also all the avenues, streets, and alleys conveyed to the said borough of Scranton.

"And, also, all and singular the hereditaments and property,
18 real and personal, with all the easements, franchises, incidents, and appurtenances that may hereafter be acquired by the said parties of the first part hereto, and all the tolls, rents, issues, and profits of the premises, together with all and singular the railroads, rails, bridges, depots, engine-houses, car-houses, station-houses, warehouses, workshops, ores, woods, mines, coal unmined, rolling-stock, easements, minerals, waters, privileges, franchises, rights, incidents, hereditaments, and appurtenances, and property, real and personal, of the said company now owned and which may hereafter be owned and acquired by the said parties of the first part hereto.

"To have and to hold all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the easement, incidents, and appurtenances, (excepting as aforesaid,) unto the said Richard M. Blatchford and John B. Newman, and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, in trust for the use, benefit, and security of such person or persons,
body or bodies, politic or corporate, as shall become the holders
19 of the said bonds, or any of them, and without priority to any holders of any such bonds or bond: Provided always, nevertheless, that if the said 'The Susquehanna and Wyoming Valley Railroad and Coal Company,' or their successors or assigns, do and shall well and truly pay, or cause to be paid, unto the respective holders of the said bonds, their respective executors, administrators, or assigns, the interest on the said respective bonds, as the same shall become due and payable, and do and shall well and truly pay, or cause to be paid, unto the said respective holders of the said bonds, the amount of the debt or principal sum secured by such bonds respectively on the day and year hereinbefore mentioned and appointed for payment of the same, with interest as aforesaid, without any fraud or further delay, and without any defalcation, deduction, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, then and from thenceforth as well this present indenture and the estate hereby granted
as the said recited bonds shall cease, determine, and become
20 void, anything hereinbefore contained to the contrary notwithstanding: Provided also, nevertheless, and it is hereby expressed, understood, and agreed by and between the parties hereto, that if at any time hereafter the interest on the said respective bonds, or any of them, shall remain unpaid for the space of sixty days after the same shall become due and be demanded, or if, at the expiration of the period in the said bonds limited for the payment of the principal thereof, default

shall be made in the payment of the principal sums thereby secured, them, and in either such case, the whole principal sum aforesaid shall become forthwith due, payable, and recoverable, and it shall and may be lawful for the mortgage trustees or trustee for the time being, under this indenture of mortgage, and upon request to be made in writing by the holder or holders of the said bonds, such holder or holders holding bonds to an amount not less than fifty thousand dollars, either to sue forth a writ or writs of scire facias upon this mortgage, and to proceed and prosecute the same, or otherwise to proceed at law or in equity for the recovery of all monies, principal and interest, due and unpaid thereon, together with all legal costs and charges of every kind which the said trustees or trustee shall or may sustain or be put to or by reason of such default, and in recovering the said principal and interest moneys with like effect, in all respects, as if twelve months next ensueing the last day whereon the said principal moneys ought to have been paid according to the terms of the said bonds had fully run out and expired, any law, usage, or practice, or anything hereinbefore contained to the contrary thereof notwithstanding; and the said parties of the first part, for themselves and their successors do hereby waive all right and privilege of continuance, delay, inquisition, extension, and stay of execution that they might otherwise be entitled to under any law or act of assembly of this commonwealth, and, as to the moneys to be produced by any sale under and by virtue of any proceedings as aforesaid, to apply the same, when and as received, in the first place, to the payment of the charges and expenses of this trust; and in the second place, to the payment of the interest due on the said recited bonds respectively, in full, and, after paying and discharging the expenses of this trust and the interest on the said bonds, to apply the balance of moneys which may be produced by such sale or sales to the payment and discharge of the principal sums in the said bonds specified to the several holders thereof in full, if sufficient for that purpose; but if not, then to and among the several holders pro rata so that no priority shall be given to any bond or bonds which shall have been issued as aforesaid, and secured by this mortgage: And provided further, and it is expressly agreed by and between the parties hereto, that in case of default in payment of the interest on the respective bond on the days and times hereinbefore mentioned for payment thereof, or of default of payment of the principal moneys aforesaid, or any part thereof, at the expiration of the period in the said bonds limited for payment thereof, then, and in either such case, it shall and may be lawful for the mortgagee trustees or trustee for the time being under this indenture of mortgage, and they are hereby expressly authorized and empowered, to proceed as aforesaid, or with or without such proceedings to enter upon and take actual and entire possession of all and singular the said property, hereditaments, and premises hereby mortgaged, and, through the agency of the persons they may from time appoint, to collect and receive the produce and profits of the said company mines and property hereby conveyed and hereafter to be acquired for the purposes aforesaid until the same shall be sold under such proceedings as aforesaid: And further, the said 'The Susquehanna and Wyoming Valley Railroad and Coal Company,' for themselves and their successors, do hereby covenant, promise, and agree, to and with the said Richard M. Blatchford and John B. Newman, and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, that they the said 'The Susquehanna and Wyoming Valley Railroad and Coal Company,' and their successors, shall

and will from time to time, and at all times hereafter, at the request of the trustees or trustee for the time being under this indenture, make, to execute, and deliver, and acknowledge, or cause or procure to be made, done, executed, delivered, and acknowledged, all and every such further and other acts, matters, things, deeds, conveyances, assignments, and assur-
24 ances in the law for the better conveying, assigning, and assuring, and confirming to the trustees or trustee for the time being under this indenture, their and his heirs, executors, administrators, and assigns, as well all and singular the hereditaments and premises, estate and property, of every kind and discription hereby conveyed, as all and singular the hereditaments and property, real and personal, with all the easements, franchises, incidents, and appurtenances that may be hereafter acquired by the said parties of the first part, and hereby mortgaged as by the said trustees or trustee for the time being under this indenture, or their or his counsel learned in the law, shall be reasonably advised, devised, and required. And it is also agreed, by and between the said parties hereto, that it shall be lawful for the said parties of the second part hereto, or the surviver of them, or the successors or successor in the trust of such survivor, to bargain and sell the whole or any part of that portion of the said mortgaged premises known as the Hitchcock estate, situate in the town of Scranton, which was conveyed by George Sanderson and wife to the said Henry Beckett, and now divided into town
25 lots, at and for such price or prices as they may deem proper, not less, however, than three hundred dollars for each town lot of twenty-five feet front by one hundred feet in depth, and to receive the consideration money therefor, and to make, execute, acknowledge, and deliver good and sufficient deeds and assurances in the law to the purchaser or the purchasers thereof in fee simple, and, as to the moneys to be produced by such sale or sales, after deducting and paying to themselves the sum of one per cent. of all the said moneys so received as and for their reasonable expenses, commissions, and services in the sale of the said town lots, to apply the same to the payment and extinguishment of such of the bonds hereby secured as can be purchased for a sum not exceeding the par value thereof, and, in case the said bonds cannot be so purchased and extinguished, then, and in such case, to deposit the said moneys in Pennsylvania with any incorporated company authorized by law to receive and execute trusts to their credit, as trustees of this trust, as and for a sinking fund for the payment
26 of the bonds hereby secured at maturity thereof, or invest the said moneys in loans of the United States, the State of Pennsylvania, or of the city of Philadelphia, and hold the same for the account of this trust as to the said trustees may seem proper and expedient. And it is hereby further covenanted and agreed by and between the said parties hereto and this trust is accepted by the said party of the second part upon the express condition, that the said Richard M. Blatchford and John B. Newman, and their successors or successor in the trust, shall not incur any liability or responsibility whatever in consequence of permitting or suffering the said party of the first part hereto, their successors and assigns, and their president, directors, officers, and agents, to retain the possession of the mortgaged premises, or any part thereof hereinbefore mentioned, described, or referred to, and to use and enjoy the same, nor shall they be or become responsible or liable for any destruction, deteriortion, loss, injury, or damage which may [may] be done or occur to the estate or property hereby mortgaged, either by the
27 said party of the first part or their officers, agents, or servants, or by any other person or persons whatsoever, or by or from any acci-

dent or other cause whatever, nor shall the trustees or trustee, present or future, be in any way responsible for the consequence of any breach of the covenants on the part of the said party of the first part herein contained, nor of any act of the said party of the first part, their officers, agents, or servants, nor shall the said trustees, present or future, be or become responsible for any exercise of judgment or discretion in any case in which such discretion is allowed or given to them, nor for any moneys, property, or real or personal estate whatever, except what shall actually and in fact come into their hands and possession by virtue of the provisions hereof, nor shall the said trustees or their successors or successor in the trust be liable or responsible for any other cause, matter, or thing except their own wilful default.

28 "In witness whereof the said 'The Susquehanna and Wyoming Valley Railroad and Coal Company' have caused their common or corporate seal to be hereunto affixed.

"Dated the day and year first hereinbefore written.

{ SEAL OF } (Signed) "CHA'S GOULD, *Pres't.*
{ COMPANY. } (Signed) "SAM'L M. BLATCHFORD, *Treas.*

"Sealed and delivered in presence of—
(Signed) "THOMAS LOYD.
(Signed) "S. MILFORD BLATCHFORD."

"STATE OF PENNSYLVANIA, *City of Philadelphia, ss:*

"Be it remembered that on the twentieth day of April, A. D. 1860, before me, the subscriber, personally appeared Charles Gould, president of the above-named corporation of 'The Susquehanna and Wyoming Valley Railroad and Coal Company,' and, being duly sworn, deposes and saith that he was personally present at the execution of the foregoing indenture of mortgage, and saw the common seal of the said corporation duly affixed thereto, and that the seal so affixed thereto is the common or corporate seal of the said 'The Susquehanna and Wyo-
29 ming Valley Railroad and Coal Company,' and that the foregoing indenture of mortgage was duly sealed and delivered by and as and for the act and deed of 'The Susquehanna and Wyoming Valley Railroad and Coal Company,' for the uses and purposes therein mentioned, in pursuance of a resolution of the board of directors passed the fifth day of March, A. D. 1860, and that the name of this deponent subscribed to the said indenture of mortgage as president of the said corporation, and the name of Samuel M. Blatchford subscribed thereto as in attestation of the due execution and delivery of the said indenture of mortgage, are of the respective proper handwritting of this deponent and the said Samuel M. Blatchford, respectively.

(Signed) "CHA'S GOULD, *Pres't.*

"Sworn and subscribed the day and year aforesaid before me. Witness my hand and seal.

[SEAL.] (Signed) "WILLIAM OGLE, *Alderman.*"

30 And the said plaintiffs further say, on information and belief, that the said indenture of mortgage was so executed and delivered in pursuance of resolutions of the president and board of directors of the said defendants, passed on the fifth day of March, A. D. 1860, and of which resolutions copies are set forth in said indenture of mortgage; that at a meeting of the stockholders of the said defendants held at Philadelphia on the twenty-ninth day of February, A. D. 1860, the proceed-

ings took place and the resolutions were passed which are set forth in said indenture of mortgage; that Charles Gould, the then president of the said defendants, duly sealed the said indenture of mortgage with the corporate seal of the said defendants, and signed the same as president of the said defendants in trust, and as the act and deed of the said defendants, and for and on behalf thereof duly delivered and acknowledged the same so as to entitle it to be duly recorded, and the said sealing, execution, and delivery were duly attested by Samuel M. Blatchford, the then treasurer of the said defendants; and that the said indenture of mortgage was duly recorded in the office for the recording of deeds, &c., in and for the county of Luzerne, in the State of Pennsylvania, in mortgage book No. 14, page 93, &c., on the fourth day of May, A. D. 1860.

31 And the said plaintiffs further say, on information and belief, that the said defendants, in pursuance of the said resolutions, issued, under their corporate seal, five hundred bonds, or single obligations, for the sum of one thousand dollars each, being for the aggregate sum of five hundred thousand dollars, and numbered from one to five hundred inclusive, and payable on the first day of December, anno Domini eighteen hundred and seventy-five, (1875,) with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first day of the months of June and December in each year; that each of said bonds was of the tenor and form in that behalf in the said indenture of mortgage set forth, and had interest coupons or interest warrants attached thereto for the payment of the interest payable thereon, and that each of the said bonds had affixed thereto the corporate seal of the said defendants, duly attested by Samuel M. Blatchford, the then treasurer of the said defendants, and the signature of Charles Gould, the then president of the said defendants, as such president, and had upon it a certificate signed by the said plaintiffs' trustees in the form of the certificate set forth in that behalf in said indenture of mortgage.

32 And the said plaintiffs further say that, after the execution of said mortgage, other estate, as well personal as real, was acquired by the said corporation, and, as they are advised, is covered, as after acquired property, by the provisions of said mortgage, and they crave leave hereafter to file of record a description of the said estate, with the same force and effect in all respects as if such description were herein incorporated, and they pray that all and singular the remedies sought to be attained under this bill may be as effectual as against the said after acquired estate, as if the same had been owned and possessed by the defendants at the time of the execution of said mortgage, and had been fully described therein.

And the said plaintiffs further says, on information and belief, that of the said five hundred bonds so issued as aforesaid, only three hundred and twenty-eight of said bonds, with the coupons or interest warrants belonging thereto for the interest so payable thereon from and including the 1st day of December, 1866, to and including the maturity of the said bonds, are now outstanding as an endebtedness or against the said defendants; that the said Henry Beckett is now the sole owner and holder of two hundred and fifty of the said bonds, amounting to the principal sum of two hundred and fifty thousand dollars, and of

33 the coupons or interest warrants belonging thereto for the interest payable thereon as aforesaid, from and including the 1st day of December, 1866, to and including the maturity of the said bonds; that the said Loyd is now sole owner and holder of seventy-eight of the said bonds, amounting to the principal sum of seventy-eight thousand

dollars, and of the coupons or interest warrants belonging thereto for the interest payable thereon as aforesaid, from and including the 1st day of December, 1866, to and including the maturity of the said bonds; and that the said Henry Beckett and the said Joseph Loyd were, on the 1st day of December, 1866, and have ever since been, respectively the sole owners and holders of the said several bonds and coupons or interest warrants so now held and owned by them respectively.

And the said plaintiffs further say, on information and belief, that the said defendants did not pay or cause to be paid unto the said Henry Beckett and said Joseph Loyd, or to either of them, the interest on any of the said bonds which so became due and payable on the 1st day of the month of December, in the year 1866; that on the said 1st day of the month of December, 1866, the said Joseph Loyd presented to Ellis Potter, the then treasurer of the said defendant, at the office of the said defendants in the city of New York, eighteen coupons or interest

34 warrants, each one of which eighteen coupons or interest warrants was cut off and detached from of eighteen of the said seventy-eight bonds so held and owned by the said Joseph Loyd, and each one of which eighteen coupons or interest warrants was numbered warrant number 14 and was for thirty-five dollars, and purported to contain a promise by the said defendants to pay to the bearer thirty-five dollars at the office of the said defendants in the city of New York, on the 1st day of December, 1866, for interest due at that date on the bond from which the said coupon or interes warrant was cut off or detached, and was signed by Samuel M. Blatchford, as treasurer of the said defendants; that the said Joseph Loyd, at the time of presenting said eighteen coupons or interest warrants to the said Ellis Potter, treasurer as aforesaid, exhibited the same to him, and demanded of him the payment of the same by him as treasurer as aforesaid and by the said defendants, and offered to deliver up the same to him as treasurer as aforesaid and to the said defendant on the payment thereof; that on the said 1st day of the month of December, in the year 1866, the said Joseph Loyd caused to be presented to the said Ellis Potter, treasurer as aforesaid,

35 at the office of the said defendants, in the city of New York, twenty other coupons or interest warrants, each one of which twenty other coupons or interest warrants was cut off and detached from one of twenty others of the said seventy-eight bonds so held and owned by the said Joseph Loyd, and each one of which twenty other coupons or interest warrants was numbered warrant number 14, and was for thirty-five dollars, and purported to contain a promise by the said defendants to pay to the bearer thirty-five dollars, at the office of the said defendants, in the city of New York, on the 1st day of December, 1866, for interest due at that date on the bond from which the said coupon or interest warrant was cut off or detached, and was signed by Samuel M. Blatchford, as treasurer of the said defendants; that the said Joseph Loyd, at the time of the presentation of the said twenty other coupons or interest warrants to the said Ellis Potter, treasurer as aforesaid, caused the same to be exhibited to him and payment of the same by him as treasurer as aforesaid, and by the said defendants to be demanded of him, and caused an offer to be made to him to deliver up the same to him as treasurer as aforesaid and to the said defendants on the payment thereof.

36 And the said plaintiffs further say, on information and belief, that none of the interest on the said three hundred and twenty-eight bonds which was due and payable on the 1st day of December, 1866, has been paid; and the said plaintiffs aver that, by reason of the

premises aforesaid, the whole principal sum secured by the said three hundred and twenty-eight thousand dollars became due, payable, and recoverable forthwith after the expiration of sixty days from the said 1st day of December, 1866.

And the said plaintiffs further say that, on the 14th day of February, 1867, the said Henry Beckett and the said Joseph Loyd, being so the owners and holders of the said bonds to the several amounts aforesaid, signed and delivered to the said plaintiffs, trustees as aforesaid, the request in writing, of which the following is a copy:

"To Messrs. Richard M. Blatchford and John B. Newman, trustees under a mortgage dated April 20th, 1860, executed by 'The Susquehanna and Wyoming Valley Railroad and Coal Company' to the said Blatchford and Newman, as trustees, and recorded in the office for recording of deeds, &c., in and for the county of Luzerne, in the State of Pennsylvania, in mortgage book No. 54, page 93, &c.:

37 "GENTLEMEN: We, the undersigned, Henry Beckett, residing at Bordentown, in the State of New Jersey, and Joseph Loyd, residing at Elizabeth, in the State of New Jersey, are the holders of bonds of the said company named in and secured by said mortgage, and of the coupons belonging thereto, from and including those due and payable December 1st, 1866, said Beckett being the holder and owner of such bonds, and the coupons thereon, to the amount of two hundred and fifty thousand dollars of said bonds, and the said Loyd being the holder of such bonds, and the coupons thereon, to the amount of seventy-eight thousand dollars of said bonds; and the interest due on the 1st day of December, 1866, on thirty-eight of the said bonds so held and owned by the said Loyd, having remained unpaid for the space of sixty days after the same due, and was demanded of the said company, the same having became due and payable, and bee so demanded, on the 1st day of December, 1866; and we, the said Beckett and the said Loyd, do hereby, as such holders of said bonds and coupons to the amounts aforesaid, request you, the said trustees, to sue forth a writ or writs of scire facias upon said mortgage, and to proceed and prosecute the same, and

38 to proceed at law and in equity for the recovery of all monies, principal and interest, due and unpaid thereon, together with all legal costs and charges of every kind which you shall or may sustain or be put to for or by reason of such default in recovering said principal and interest monies.

"Witness our hands this fourteenth day of February, 1867.

"HENRY BECKETT.
"JOS. LOYD.

"Witness: SAMUEL BLATCHFORD."

And the said plaintiffs further say that no proceedings have been had at law or otherwise to their knowledge, information, or belief, for the recovery of the principal or interest monies secured to be paid by the said bonds, or any of them, or any part thereof, or of the sums secured by the said indenture of mortgage, or any part thereof.

And the said plaintiffs further say, on information and belief, that the said Henry Beckett resides at Bordentown, in the State of New Jersey, and is not a citizen of the United States, but is an alien and a subject of the Queen of the United Kingdom of Great Britain and Ireland; that the said Joseph Loyd resides at Elizabeth, in the State of New Jersey, and is a citizen of the United States, and a citizen of the State of New

Jersey; and the said plaintiffs aver that this suit is brought by the said plaintiffs, as trustees as aforesaid, for the sole use, benefit, and behoof of the said Henry Beckett and the said Joseph Loyd.

39 And the said plaintiffs pray that under and by virtue of a decree of this court to be made herein the said defendants, and all persons claiming under them subsequent to the commencement of this suit, may be barred and foreclosed of all rights, claims, liens, and equitees of redemption in and to the hereditaments, premises, easements, incidents, and appurtenances granted or mentioned in, or intended to be granted or mentioned in, the said indenture of mortgage; that the said lots, tracts, pieces, and parcels of land, tenements, hereditaments, and premises, and steam-engines, machinery, and implements of mining, boats, and all other matters and things used and employed in working the mines of the said defendants, and carrying coal, or in any wise appertaining thereto, specified in the said indenture of mortgage as granted, bargained, sold, aliened, enfeoffed, realeased, confirmed, assigned, transferred, and set over unto the said plaintiffs, and als all and singular the hereditaments and property, real and personal, with all the easements, franchises, incidents, and appurtenances that have been acquired by the said deffendants since the said twentieth day of April, in the year

40 of our Lord one thousand eight hundred and sixty, and all the tolls, rents, issues, and profits of the said premises, together with all and singular the railroads, rails, bridges, depots, engine-houses, car-houses, station-houses, warehouses, workshops, ores, woods, mines, coal unmined, roling-stock, easements, minerals, waters, privileges, franchises, rights, incidents, hereditaments, and appurtenances, and property, real and personal, of the said defendants, owned by them on the said twentieth day of April, in the year of our Lord one thousand eight hundred and sixty, and also all and singular the same which may have been owned and acquired by them at any time subsequently to the said twentieth day

41 of April, in the year of our Lord one thousand eight hundred and sixty, and all the hereditaments, premises, easements, incidents, and appurtenances granted or mentioned in, or intended to be granted or mentioned in, the said indenture of mortgage, or so much thereof as may be necessary to pay the charges and expenses of the said trust, and the charges and expenses of this suit, including all legal costs and charges of every kind which the said plaintiffs have sustained or been put to, or shall sustain or be put to, for or by reason of the said default of the said defendants, and in recovering the said principal and interest monies, and also the interest due on the said three hundred and twenty-eight bonds in full, and also the principal sums specified in the said three hundred and twenty-eight bonds, may be sold by or under the direction of this court; that the said plaintiffs, or the said Henry Beckett, or the said Joseph Loyd, or any other party to this suit, may have leave to become the purchaser on such sale; that a deed executed under the direction of this court to such purchaser; that, out of the proceeds of such sale, after deducting therefrom the amount of the expenses of such sale and any lien or liens upon said premises at the time of such sale for taxes and assessments, there be paid to the

42 said plaintiffs, or to their solicitor, a sufficient sum of money to pay and discharge the charges and expenses of the said trust, and the charges and expenses of this suit, including all legal costs and charges of every kind which the said plaintiffs have sustained or been put to, or shall sustain or be put to, for or by reason of the said default of the said defendants; and, in recovering the said principal and interest moneys, and also the interest due on the said three hundred and twenty-

eight bonds in full, and also all the principal sums specified in the said three hundred and twenty-eight bonds, or so much as the purchase-money on such sale will pay of the same, that the purchaser at such sale be let into the possession of said premises on production of the deed therefor on such sale; that the said defendants may be adjudged by said decree to pay any balance or deficiency that may be found due to the said plaintiffs by reason of the premises aforesaid, over and above the proceeds of such sale, and which may remain after applying all of the said moneys so applicable thereto; and that a judgment or decree therefor be docketted against the said defendants, and for such balance or deficiency, if any, and that execution thereon issue against the said defendants for the collection of the same; and that the said
43 plaintiffs may have such further relief as the equity of the case may require, and as to your honors may seem meet.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may full, true, direct, and perfect answer make, according to the best of their knowledge, remembrance, information, and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were here repeated paragraph by paragraph, and they were specially interrogated thereunto severally, may it please your honors to grant to the said plaintiffs a writ of subpœna ad respondendum, issuing out of and under the seal of this honorable court directed to the said defendants, "The Susquehanna and Wyoming Valley Railroad and Coal Company," commanding them to appear and make answer to this bill of complaint, and to perform and abide by such order and decree herein as to this court may seem required by the principles of equity and good conscience.

And the said plaintiffs will ever pray, &c.

R. M. BLATCHFORD.

THEO. CUYLER.
Solicitor for Plaintiffs & of Counsel.

44 UNITED STATES OF AMERICA,
Southern District of New York, ss:

On the twenty-seventh day of February, 1867, before me came Richard M. Blatchford, one of the plaintiffs named in the foregoing bill of complaint, and who has signed the same, and he, being by me duly sworn, did depose and say that he had heard the said bill read, and knew the contents thereof, and that the same was true of his own knowledge, except as to the matters which are therein stated on the information and belief of the plaintiffs, and that as to those matters he believed it to be true.

[SEAL.] JOSEPH GETMAN, JR.,
United States Commissioner Southern District of New York.

45 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The President of the United States to the Susquehanna and
[L. S] Wyoming Valley Railroad and Coal Company, a corporation of the State of Pennsylvania:

For certain causes offered before the circuit court of the United States in and for the western district of Pennsylvania, in the third circuit, in the bill in equity of Richard M. Blatchford, a citizen of the State of New York, and John D. Newman, a citizen of the State of Pennsylvania, we

command and strictly enjoin you, that, laying aside all other matters, and notwithstanding any excuse, you personally be and appear before the judge of the said court, at a session of the same court, to be holden at Pittsburgh, on the first Monday of April next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf. And this you are in no wise to omit, under the penalty of ten thousand dollars.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this fifth day of March, A. D. 1867, and of the independence of the United States the ninety-first.

H. SPROUL, *Clerk.*

[50-cts. int. rev. 50 cts.]

The defendants are required to enter appearance in this suit on or before the return day of this writ; otherwise the bill may be taken pro confesso.

(Indorsed:) No. 9, May term, 1867. In equity. R. M. Blatchford et al. v. S. & W. V. R. R. & Coal Company. Subpœna in equity.

TAYLORVILLE, *March* 7, 1867.

Served personally and by copy on William Connell, (at 1½ after 6 a. m.,) superintendent of the within-named company.

So ans.—

T. A. ROWLEY, *U. S. M.*,
Per S. MCKELVY, JR., *Dep't Mar.*

$29 44.

46 In the circuit court of the United States for the western district of Pennsylvania, at Pittsburg, in equity, No. 9, May T., 1867.

RICHARD M. BLATCHFORD AND JOHN B. NEWMAN, trustees,
vs.
THE SUSQUEHANNA AND WYOMING VALLEY Railroad and Coal Co.

The demurrer of the Susquehanna and Wyoming Valley Railroad and Coal Company, defendant, to the bill of complaint of Richard M. Blatchford and John B. Newman, trustees.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' said bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for cause of demurrer saith that this court ought not to have or take further cognizance of the complaint aforesaid, because it appears, by the complainants' own showing by their said bill of complaint, that one of the said complainants, to wit, John B. Newman, is a citizen of the State of Pennsylvania, and a resident of the city of Philadelphia. Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether this defendant shall be compelled to make
47 any further or other answer to the said bill, and hereby prays to be hence dismissed, with its reasonable costs in this behalf sustained.

We, who are of counsel for the defendants, who interpose the foregoing demurrer, do certify that in our opinion it is well founded in point of law.

HAND & POST.
I. J POST.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I. J. Post, one of the counsel of said defendants, on his solemn oath doth depose and say the foregoing demurrer is not interposed for delay.

I. J. POST.

Sworn and subscribed May 6, 1867, before me.

H. SPROUL, *Clk.*

In this case the demurrer is overruled, and the defendants have leave to answer within thirty-five days.
November 4th, 1867.

R. C. GRIER,
Asst. Judge S. C. U. S.

48 *Answer of defendants.*

In the circuit court of the United States for the western district of Pennsylvania, in equity.

RICHARD M. BLATCHFORD AND JOHN B. NEWMAN, trustees,
vs.
THE SUSQUEHANNA AND WYOMING VALLEY Railroad and Coal Company.

Hand & Post, of Scranton, Pa., John Chetwood, of New York, Edward F. Hodges, of Boston, for defendants.

49 Circuit court of the United States for the western district of Pennsylvania, in equity.

The answer of the Susquehanna and Wyoming Valley Railroad and Coal Company, defendants, to the bill of complaint of Richard M. Blatchford and John B. Newman, trustees, complainants.

These defendants, now, and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, say—

That on the twentieth day of April, 1860, one Charles Gould, claiming to act as president of this company, and Samuel M. Blatchford, claiming to act as treasurer, did execute and deliver to said plaintiffs R. M. Blatchford and John B. Newman, trustees, an indenture of mortgage in manner and form as set forth in complainants' said bill, and that the said persons claiming to act as aforesaid issued five hundred bonds for the sum of one hundred dollars each, with interest coupons attached thereto; but these defendants aver that said mortgage and bonds were executed, issued, and delivered, as will fully appear from the averments hereinafter

contained, under such circumstances and for such purposes as give these defendants a full equitable defence to the whole amount claimed by complainants in their said bill.

That the said bonds alleged in complainants' bill to belong to said Joseph Loyd are not the property of said Joseph Loyd, but belong
50 to Isaac S. Loyd, the father of said Joseph Loyd.

That said bonds were first delivered to Isaac S. Loyd by said Henry Beckett, and were for a long time in the possession and custody of said Isaac S. Loyd; that the transfer and delivery of the same to Joseph Loyd, if they have ever been transferred or delivered to him, was without consideration and for the purpose, as these defendants believe, of preventing any offset or defence which this company might have against said Isaac S. Loyd; that the said Isaac S. Loyd still continues to exercise ownership over the same; that from a time prior to the issue of said bonds until the month of May, A. D. 1865, Isaac S. Loyd, and, in connection with him, the said Henry Beckett, have, without any considerable intermission, held complete control of the affairs and management of this company, nearly the entire stock of said company during that time being held for, or owned by, the said Isaac S. Loyd and Henry Beckett; that the purchase of said lands and premises described in said mortgage from the said Henry Beckett by said company was effected by the votes of said Loyd and Beckett at a price greatly exceeding the real value of said real estate, to wit, at the sum of eight hundred thousand dollars; and the shares of stock held by said Beckett and Loyd, upon which they voted to purchase said lands of said Beckett, were the same shares for which they themselves had subscribed in organizing this corporation, and for which they never made any cash payment, except some trifling sum for the expense of organization; that they issued or caused to be issued said bonds to said Beckett in part payment for said land, and at the same time issued bonds in addition to the amount of two hundred and fifty thousand dollars for the same purpose, which bonds were immediately converted into the capital stock of said defendants.

That the said Isaac S. Loyd and Henry Beckett, during their said control and management of this company, issued, or caused to be issued, a large amount of the capital stock of this company, without authority of law, and without any equivalent to this corporation for the same; that they by their votes and influence caused said company to declare and pay a dividend of ten per centum on the capital stock of said company, which said dividend was paid, not out of the net earnings of the company, but was paid out of money derived from a sale effected by said Loyd and Beckett to said Joseph Loyd, son of said Isaac S. Loyd, at a price then below its real value, of a certain portion of the real estate of this corporation, the money ostensibly paid for said portion of real estate being furnished by said Isaac S. Loyd and Beckett, the greater portion
51 of which was again returned to them in said dividend upon stock held either by them or by persons acting for them, which said dividend was declared for the purpose of creating a fictitious value to the stock of this company, and did create such fictitious value; that the said Isaac S. Loyd and Henry Beckett conspired together to do and perform all of said illegal acts as aforesaid, and other acts and things during their said control and management of said company, as these defendants are informed and believe, with intent to defraud parties who should thereafter purchase the stock of this company, whereby they have caused a great loss and damage to these defendants, to wit, to the

amount of nine hundred and eighty-eight thousand dollars, as these defendants aver they can prove.

That said bonds and mortgage were not given for money borrowed by this company, nor to construct any railroad authorized by any of the acts of the general assembly of the Commonwealth of Pennsylvania, under which this corporation acts, no railroad having been constructed or commenced by this corporation.

That these defendants refer to the following acts of assembly of the Commonwealth of Pennsylvania as to the authority conferred upon this company to execute the said bonds and mortgage, to wit: An act approved the 28th day of February, 1837, incorporating the Mountain Coal Company; an act approved the 18th day of March, 1835, entitled "An act to incorporate the Hazelton Coal Company;" an act approved the 6th April, 1854, entitled "A supplement to an act incorporating the Mountain Coal Company;" an act approved the 26th day of April, 1854, entitled "A further supplement to an act incorporating the Mountain Coal Company;" an act approved the 13th day of May, 1856, entitled "A supplement to an act incorporating the Mountain Coal Company."

That the corporate name given to this company by the foregoing acts of assembly was subsequently changed by proceedings in the court of quarter sessions of Luzerne County to the name whereby these defendants are in this suit impleaded.

That, during their said management and control of the affairs of this corporation, the said Isaac S. Loyd and Henry Beckett held out and represented to the public, and particularly to the parties now holding the stock of this company, that there had been laid out and expended in the purchase and improvement of the company's property the
52 sum of one million four hundred and eighty-eight thousand dollars, whereas, in truth, the said Loyd & Beckett, and their associates had never so expended any money, except that derived from the sale of part of the property—originally put by them into this company—which property was the only consideration and foundation for the bonds and stock issued as aforesaid, and which property should in fairness never have been put in at a price exceeding the sum of five hundred thousand dollars; that such representation was false and calculated to mislead the public, and did mislead the parties subsequently purchasing and now holding the stock of this company; that, at or about the time of the making of the said mortgage, the estimate of value put by the said Henry Beckett himself upon the property and premises therein described was three hundred thousand dollars; and the value of all the property acquired by the company thereafter, and prior to May, 1865, did not exceed two hundred thousand dollars; that by reason of the said false representations made by said Loyd and Beckett, these defendants have suffered loss to the amount of nine hundred and eighty-eight thousand dollars, all of which these defendants aver they can prove, which said loss they aver is a legal and equitable offset and defence in this suit; that the knowledge of these facts recently came to these defendants.

The defendants admit that only three hundred and twenty-eight of said bonds were outstanding at the time of filing complainants' said bill; that it may be true, for anything these respondents know to the contrary, that the said Henry Beckett is now the sole owner of two hundred and fifty of said bonds and coupons, as mentioned in complainants' said bill, but these defendants are ignorant of all and every such matter, and cannot form any belief concerning the same; that these defendants deny, and believe such denial to be true, that the said Joseph Loyd is now or was at the time of the filing of complainants' bill the sole owner and

holder of seventy-eight of the said bonds, and of the coupons belonging thereto; that said bonds were formerly in the possession of the said Henry Beckett, and were delivered to the said Isaac S. Loyd, father of the said Joseph Loyd, by the said Henry Beckett, for the purpose of being converted into the capital stock of said company, and under the express agreement that the same should be so converted; that prior to this the said Isaac S. Loyd had procured other bonds secured by said mortgage,
53 for the purpose of converting the same into the capital stock of said company, which from time to time was done; that, at the time of such delivery of the said bonds claimed by said Joseph Loyd, the said Isaac S. Loyd was an officer of the said company, and, acting as such, agreed with said Henry Beckett to convert the same into the capital stock as aforesaid; that if said bonds are a valid claim against this company they should be converted into the capital stock thereof, of all which said several facts the said Joseph Loyd had notice; that the knowledge of these facts recently came to these defendants.

And these defendants further say that although it is true that the company did not pay to Henry Beckett the interest on any of the said bonds held by him on the first day of December, 1866, yet they aver that the said Henry Beckett has never duly presented the coupons therefor for payment; that it is true that, some time in the month of December, 1866, the said Joseph Loyd presented some coupons to Ellis Potter, the then treasurer of these defendants, at their office, but whether or not the same were presented on the first day of December, and how many coupons were presented, these defendants cannot state, the said Joseph Loyd not stating at the time how many coupons he had in his possession, nor how much money he demanded of this company; that the said Ellis Potter, treasurer, then offered to pay to the said Joseph Loyd the amount of his coupons after deducting the amount of taxes due and payable to the government of the United States, and to the Commonwealth of Pennsylvania, by the person or persons who were the holder or holders of said bonds, which, by the laws of the said government and commonwealth in relation thereto, this company was compelled to deduct from the amount of said coupons, but the said Joseph Loyd refused to allow such deduction, and refused to deliver up the coupons presented by him; that it is true that, at another time than when the said above presentation of coupons was made, some person to these defendants unknown presented some coupons (the number these defendants cannot state, but suppose them to be the twenty coupons mentioned in said complainants' bill) at the office of this company, and the said Ellis Porter, treasurer, then offered to pay the same, but claimed the right for said company to retain the amount of tax due and payable to the United States government, and to the Commonwealth of Pennsylvania by the holder or holders of said bonds, out of the amount
54 of said coupons, which by law this company was compelled to retain, but the person so presenting the said coupons refused to permit such deduction, by reason of which the said company did not pay said coupons; that, at the time the coupons on the bonds alleged to belong to the said Joseph Loyd fell due, and were as alleged presented for payment, the said Joseph Loyd was indebted, and still is indebted, to this company in an unsettled account, in a sum exceeding the amount of said coupons.

That for the purpose of paying off said bonds and the mortgages given to secure them, as was warranted by the terms of said mortgage, an arrangement was effected between this company and the said trustees, with the approbation of their cestuis que trusts, by which this company

should sell lots from the portion of said land known as the Hitchcock tract, and the money received for such sales, when the full amount of purchase-money was paid, was to be deposited in the First National Bank of Scranton, Pa., and a certificate of deposit taken, payable to the order of the said trustees, R. M. Blatchford and J. B. Newman, and transmitted to them, and thereupon they were to join in a deed or deeds for the lot or lots so sold; that, in pursuance of this arrangement, this company has from time to time sold to different persons divers lots out of said portion of land, for prices exceeding greatly the price mentioned in said mortgage; that a large number of lots so sold have been fully paid for at the prices fixed upon between said company and the purchasers thereof, and that for many of said lots deeds have been made and executed by this company and the said trustees jointly; that a form of deed was adopted by this company and said trustees for the purpose of conveying the title to such lots of land, a copy of which is to this answer annexed, and marked A, and these defendants pray that the same may be taken as a part of this answer, as if the same were fully set forth; that many other lots from the same tract have been sold to different persons, which are not yet fully paid for, but upon which payments have been made, and for which contracts have been entered into in writing between this company and the purchasers thereof, this company covenanting therein to grant and convey said lots by good and sufficient deed, and for which no deeds have been executed, but possession of which said lots has been delivered to said purchasers; that a list of all of said lots of land so sold and conveyed, or sold under contract, is hereto annexed, and marked B, which these defendants pray may be taken as part of this answer, as if the same were fully
55 herein set forth, showing the respective numbers of the lots sold, and the blocks in which they are located, also the purchaser or purchasers thereof, the price for which the same were sold, and the dates of the respective sales; and these defendants aver, and believe the averment to be true, that in each and every instance the size of the lots so sold, except where stated otherwise in said list, is forty feet in width in front and rear, and one hundred and fifty feet in depth, with the privilege of enclosing in front of each lot, and on the side, in case of corner lots, ten feet additional for yards, said lots being rectangular in shape; and these defendants suggest that the said purchasers should be made parties to the said bill of complaint, and aver that they are all within the jurisdiction of this court; and these defendants pray this honorable court that they may be made parties thereto, and that their rights and equities in the premises may be fully protected by this court.

That in consequence of the recent great enhancement of the value of real estate in the city of Scranton, and of the judicious management of the parties who succeeded the said Loyd and Beckett in the direction of the affairs of this company, the lots in said city of Scranton, within the said Hitchcock tract, belonging to this company, have been so brought into the market that sales can readily be effected of nearly all of them at prices, which, with an amount of nearly $60,000 (sixty thousand) to be received for lots already contracted, will fully liquidate the principal and interest of all of said bonds before their maturity by the terms of the mortgage; and these defendants submit to this honorable court that this mode of paying said mortgage and bonds having been adopted by said trustees and this company, it is and should be in equity a bar to the remedy sought by the said complainants in their said bill of complaint.

That the said trustees have since the execution of said mortgage

conveyed and released to the said Joseph Loyd the title to divers lots and pieces of land in the late borough now city of Scranton, part of the premises in said mortgage described and known as the Hitchcock estate, and have not cancelled, or caused to be cancelled, an amount of bonds equal to the value of said lots calculated upon the basis mentioned in said mortgage as a minimum price for the same; that this company would be entitled to a credit, upon the liquidation of the amount
56 to be paid on said mortgage, if any amount is due thereon, of the difference between the amount of bonds actually cancelled by said trustees and the amount which should have been cancelled by them; that said amount can be ascertained by a survey of the land, and a calculation which these defendants offer to make and prove to this court, which said difference these defendants aver should first be applied to the payment of any overdue coupons.

That said lands so conveyed to said Joseph Loyd have since been sold and conveyed to Joseph H. Scranton, John C. Burgess, and others, to the said Joseph Loyd known, as these defendants are informed and believe, but unknown to these defendants, all of whom should be made parties to this suit, in order fully to protect their rights and the rights of this company.

That, notwithstanding the matters of defence herein set
have come to the knowledge of these defendants since the
said coupons hereinafter mentioned, these defendants, be
to incur any risk of forfeiture under said mortgage, did, be
ration of sixty days from the first day of December, 1866,
direct one William P. Dixon, an agent of this company,
previous times negotiated the postponement and payme
coupons, and did provide him with the proper amount of mo
to pay the whole amount of coupons falling due on the sai
December, 1866, and did direct said W. P. Dixon to find t
holders of said coupons and pay the same; that said Dixo
undertook to pay the same, but, previous to the day when said sixty days from the first day of December, 1866, would expire, the said Dixon was taken sick, and continued sick until after the expiration of said sixty days; that these defendants, learning these facts subsequently and before the filing of complainants' bill, offered to pay the amount of said coupons, subject to the aforesaid deduction for taxes, to said Beckett and Loyd, who refused to receive the same.

That at divers times before the first day of December, 1866, when coupons have fallen due, default in payment has been made for more than sixty days after such coupons became due; and the said Loyd and Henry Beckett subsequently received the amount of such coupons without insisting upon the payment of the whole sum of principal and interest upon said mortgage, whereby, as these defendants are informed
57 and believe, they waived all right to insist upon such forfeiture as is sought to be enforced in this complaint.

These defendants admit that, after the execution of said mortgage, other estate, as well personal as real, was acquired by this company; but they deny that such estate, as well personal as real, is in law or equity covered by the provisions of said mortgage.

These defendants deny that by reason of the matters and things alleged and set forth in complainants' said bill, should the same be proven to be true, that the whole principal sum secured by the said three hundred and twenty-eight bonds, to wit, the sum of three hundred and twenty-eight thousand dollars, became due and recoverable forthwith after the expiration of sixty days from the said first day of December,

should sell lots from the portion of said land known as the Hitchcock tract, and the money received for such sales, when the full amount of purchase-money was paid, was to be deposited in the First National Bank of Scranton, Pa., and a certificate of deposit taken, payable to the order of the said trustees, R. M. Blatchford and J. B. Newman, and transmitted to them, and thereupon they were to join in a deed or deeds for the lot or lots so sold; that, in pursuance of this arrangement, this company has from time to time sold to different persons divers lots out of said portion of land, for prices exceeding greatly the price mentioned in said mortgage; that a large number of lots so sold have been fully paid for at the prices fixed upon between said company and the purchasers thereof, and that for many of said lots deeds have been made and executed by this company and the said trustees jointly; that a form of deed was adopted by this company and said trustees for the purpose of conveying the title to such lots of land, a copy of which is to this answer annexed, and marked A, and these defendants pray that the same may be taken as a part of this answer, as if the same were fully set forth; that many other lots from the same tract have been sold to different persons, which are not yet fully paid for, but upon which payments have been made, and for which contracts have been entered into in writing between this company and the purchasers thereof, this company covenanting therein to grant and convey said lots by good and sufficient deed, and for which no deeds have been executed, but possession of which said lots has been delivered to said purchasers; that a list of all of said lots of land so sold and conveyed, or sold under contract, is hereto annexed, and marked B, which these defendants pray may be taken as part of this answer, as if the same were fully
55 herein set forth, showing the respective numbers of the lots sold, and the blocks in which they are located, also the purchaser or purchasers thereof, the price for which the same were sold, and the dates of the respective sales; and these defendants aver, and believe the averment to be true, that in each and every instance the size of the lots so sold, except where stated otherwise in said list, is forty feet in width in front and rear, and one hundred and fifty feet in depth, with the privilege of enclosing in front of each lot, and on the side, in case of corner lots, ten feet additional for yards, said lots being rectangular in shape; and these defendants suggest that the said purchasers should be made parties to the said bill of complaint, and aver that they are all within the jurisdiction of this court; and these defendants pray this honorable court that they may be made parties thereto, and that their rights and equities in the premises may be fully protected by this court.

That in consequence of the recent great enhancement of the value of real estate in the city of Scranton, and of the judicious management of the parties who succeeded the said Loyd and Beckett in the direction of the affairs of this company, the lots in said city of Scranton, within the said Hitchcock tract, belonging to this company, have been so brought into the market that sales can readily be effected of nearly all of them at prices, which, with an amount of nearly $60,000 (sixty thousand) to be received for lots already contracted, will fully liquidate the principal and interest of all of said bonds before their maturity by the terms of the mortgage; and these defendants submit to this honorable court that this mode of paying said mortgage and bonds having been adopted by said trustees and this company, it is and should be in equity a bar to the remedy sought by the said complainants in their said bill of complaint.

That the said trustees have since the execution of said mortgage

conveyed and released to the said Joseph Loyd the title to divers lots and pieces of land in the late borough now city of Scranton, part of the premises in said mortgage described and known as the Hitchcock estate, and have not cancelled, or caused to be cancelled, an amount of bonds equal to the value of said lots calculated upon the basis mentioned in said mortgage as a minimum price for the same; that this company would be entitled to a credit, upon the liquidation of the amount
56 to be paid on said mortgage, if any amount is due thereon, of the difference between the amount of bonds actually cancelled by said trustees and the amount which should have been cancelled by them; that said amount can be ascertained by a survey of the land, and a calculation which these defendants offer to make and prove to this court, which said difference these defendants aver should first be applied to the payment of any overdue coupons.

That said lands so conveyed to said Joseph Loyd have since been sold and conveyed to Joseph H. Scranton, John C. Burgess, and others, to the said Joseph Loyd known, as these defendants are informed and believe, but unknown to these defendants, all of whom should be made parties to this suit, in order fully to protect their rights and the rights of this company.

That, notwithstanding the matters of defence herein set forth, which have come to the knowledge of these defendants since the effort to pay said coupons hereinafter mentioned, these defendants, being unwilling to incur any risk of forfeiture under said mortgage, did, before the expiration of sixty days from the first day of December, 1866, authorize and direct one William P. Dixon, an agent of this company, who had at previous times negotiated the postponement and payment of former coupons, and did provide him with the proper amount of money necessary to pay the whole amount of coupons falling due on the said first day of December, 1866, and did direct said W. P. Dixon to find the holder or holders of said coupons and pay the same; that said Dixon offered and undertook to pay the same, but, previous to the day when said sixty days from the first day of December, 1866, would expire, the said Dixon was taken sick, and continued sick until after the expiration of said sixty days; that these defendants, learning these facts subsequently and before the filing of complainants' bill, offered to pay the amount of said coupons, subject to the aforesaid deduction for taxes, to said Beckett and Loyd, who refused to receive the same.

That at divers times before the first day of December, 1866, when coupons have fallen due, default in payment has been made for more than sixty days after such coupons became due; and the said Loyd and Henry Beckett subsequently received the amount of such coupons without insisting upon the payment of the whole sum of principal and interest upon said mortgage, whereby, as these defendants are informed
57 and believe, they waived all right to insist upon such forfeiture as is sought to be enforced in this complaint.

These defendants admit that, after the execution of said mortgage, other estate, as well personal as real, was acquired by this company; but they deny that such estate, as well personal as real, is in law or equity covered by the provisions of said mortgage.

These defendants deny that by reason of the matters and things alleged and set forth in complainants' said bill, should the same be proven to be true, that the whole principal sum secured by the said three hundred and twenty-eight bonds, to wit, the sum of three hundred and twenty-eight thousand dollars, became due and recoverable forthwith after the expiration of sixty days from the said first day of December,

1866; and if this honorable court should be of the opinion that, notwithstanding the matters of defence set forth by these defendants in this answer, there was such default in the payment of interest coupons held by complainants, and secured by said mortgage as entitles the said complainants to any relief in equity, then these defendants, now and at all times submitting to this honorable court, offer to pay or cause to be paid to the said complainants the amount of such coupons and interest warrants as are overdue, together with such damages as to your honors may be deemed equitable and just by reason of such default, these defendants always insisting upon such deductions from the amount of said coupons for taxes as hereinbefore alleged as may be legal and equitable.

And these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

In witness whereof they have caused their corporate seal, duly attested by the signature of their vice-president, to be hereunto affixed this 9th day of December, A. D. 1867.

[SEAL.] GEO. W. HODGES,
Vice-President and acting President.

Attest:
[CORPORATE SEAL.] ELLIS POTTER, *Secretary.*

STATE OF NEW YORK, *County & City of New York, ss:*

Geo. W. Hodges, vice-president, being sworn according to law, deposes and says that the facts set forth in the foregoing answer,
58 so far as stated upon his own knowledge, are true, and so far as stated upon the information of others he verily believes to be true.

Sworn and subscribed before me this 9th day of December, 1867, as witness my hand and notarial seal.

CHARLES NETTLETON, [SEAL.]
Notary Public for New York County, State of New York.

Subscribed and sworn to before me this 24 Jan'y, 1868.
[SEAL.] R. E. STILLWELL,
U. S. Com'r.

UNITED STATES OF AMERICA, *Southern Dis't of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stillwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court this 24th day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of these United States the ninety-second.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Marked "A," and referred to in the annexed answer.

This indenture, made the day of , in the year of our Lord one thousand eight hundred and , between "The Susquehanna and Wyoming Valley Railroad and Coal

Company," a corporation of the State of Pennsylvania, and Richard M. Blatchford and John B. Newman, trustees, created by virtue of a certain mortgage bearing date the 20th day of April, A. D. 1860, and recorded in the office for recording of deeds, &c., in and for Luzerne County, in the State of Pennsylvania, in mortgage book number fourteen, page 93, &c., of the one part, and , of the other part:

Witnesseth that the parties of the first part, in consideration of the sum of dollars to them in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said part heirs and assigns, that certain messuage or parcel of land situate, lying, and being in the borough of Scranton, county of Luzerne, and State of Pennsylvania, described as follows: Being lot number , in square or block number , and situate upon street called and known as upon the town plot of the town of Scranton, intended to be duly registered and recorded, said lot being feet in front on and feet in depth

The measurement of the depth of said lot to commence feet inside of the sidewalk, the said part of the second part having the right to enclose, occupy, and use ten feet in front of said lot for cellarway, porch, portico, bay windows, or shrubbery, but has not the right to erect any building thereon.

59 Excepting and reserving therefrom to the parties of the first part, their successors or assigns, all the coal and minerals beneath the surface of the said lot, together with the sole right to mine and remove the same by subterranean process only. The said part of the second part, in consideration of one dollar to paid by the said "The Susquehanna and Wyoming Valley Railroad and Coal Company," do for heirs, executors, administrators, and assigns, covenant and agree by these presents to release, and by these presents do release and forever discharge the said parties of the first part, their successors and assigns, their miners, laborers, artisans, and all others in their employ, from all damages, suits, actions, or right of action in law or equity that may arise or accrue, or which may be supposed to have arisen or accrued, in consequence of the mining operations of the said company, their successors or assigns, except such as may happen from gross carelessness.

Together with all and singular the ways, improvements, rights, liberties, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profit thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, benefit, property, claim, and demand whatsoever in law or equity of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, subject to the reservations, restrictions, and disabilities hereinbefore made, contained, and agreed to.

To have and to hold the said lot and premises to the said part of the second part, heirs and assigns, to the only proper use and behoof of the said part of the second part, heirs and assigns, forever.

And the said trustees aforesaid, by virtue of the authority contained in the mortgage aforesaid, having received the purchase-money of said lot, do hereby release, remise, and forever quit-claim said land of and from

the lien of said mortgage, and join in this deed for the purpose of perfecting title to said land.

And the said "The Susquehanna and Wyoming Valley Railroad and Coal Company," for themselves, their successors, and assigns, do covenant, promise, and agree to and with the said part of the second part, heirs and assigns, that they, the said parties of the first part, their successors and assigns, all and singular, the hereditaments and
60 premises hereby granted or mentioned, and intended so to be, with the appurtenances unto the said party of the second part, his heirs or assigns, against the parties of the first part, their successors and assigns, and against all and every person or persons lawfully claiming or to claim the same subject to the aforesaid reservations, restrictions, and disabilities, shall and will warrant and forever defend.

In witness whereof the said "The Susquehanna and Wyoming Valley Railroad and Coal Company" have caused their corporate seal to be hereunto affixed, and these presents to be attested by the president and secretary of said company, and the said trustees have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in presence of—

STATE OF NEW YORK, *City of New York, ss:*

Be it remembered that on the day of A. D. 186 before me, personally appeared president of the above-named corporation, and, being duly sworn, saith that he was personally present at the execution of the above indenture, and saw the common seal of said corporation of the Susquehanna and Wyoming Valley Railroad and Coal Company duly affixed, and that the seal so affixed thereto is the common seal of the said The Susquehanna and Wyoming Valley Railroad and Coal Company, and that the above indenture was duly sealed and delivered by and as and for the act and deed of the said The Susquehanna and Wyoming Valley Railroad and Coal Company for the uses and purposes therein mentioned, and that the name of this deponent subscribed to said indenture as president to said corporation, in attestation of the due execution and delivery of said indenture, is in this deponent's proper handwriting.

Sworn and subscribed the day and year aforesaid before me. Witness my hand and seal.

61 STATE OF NEW YORK, *City of New York, ss:*

Personally appeared Richard M. Blatchford, one of the trustees above named, and in due form of law acknowledged the foregoing indenture to be his act and deed to the end that the same might be recorded as such.

Witness my hand and seal this day of , A. D. 186 .

STATE OF PENNSYLVANIA, *City of Philadelphia, ss:*

Personally appeared John B. Newman, one of the trustees above named, and in due from of law acknowledged the foregoing indenture to be his act and deed to the end that the same might be recorded as such.

Witness my hand and seal this day of , A. D, 186 .

B.

List of lots sold by the Susquehanna and Wyoming Valley Railroad and Coal Company, and conveyed by deed, in which the trustees under the mortgage have joined.

No. of block.	No. of lot.	Purchaser.	Consideration.	Date of sale.
49	4	Moses Whitty	$1,000	Nov. 11, 1865.
"	5	"	1,000	"
101	3	Isaac T. Fuller	1,000	
"	4	Watts Cooke	1,000	Sept. 1, 1864.
"	5	"	1,000	"
"	6	W'm Breck	2,600 for the 3	34x239 f't, Ap'l 1864
"	25	"		"
"	26	"		"
107	8	Isaac Costlett	900	
"	9	E. E. Hill	900	
"	10	"	900	
108	13, 14, 15, and 16	A. M. Decker	3,000	
"	17, 18, and 19	James Archibald, jr.	2,250	
37	9, 10, 11, and ½ of 12	Vestry-men and wardens of St. Luke's C'h	2,688	May 12, 1866.
54	1 and 2	George Fisher	1,800	June 16, 1866.

62 *List of lots sold by the Susquehanna and Wyoming Valley Railroad and Coal Company under contract.*

No. of block.	No. of lot.	Purchaser.	Consideration.	Date of contract.
36	3	Richard McCue	$2,000	Sept. 20, 1866.
37	13 and ½ of 12	Horace Ladd	2,100	Feb'y 10, "
48	2	William Meyers	1,500	May 12, "
"	4	Andrew Ranschmeyer	900	Dec. 20, 1865.
"	5	John Genter	1,400	March 26, 1866.
49	1, 2, and 3	Moses Whitty	3,000	Nov. 11, 1865.
"	6	William H. Pier	1,200	Feb'y 1, "
101	1	John Rafter	1,500	April 24, 1866.
"	2	George Fuller	1,000	" "
"	13, 14, and 15	H. B. Rockwell	3,900	March 1, "
"	16	R. S. Benjamin	1,200	Sept. 30, "
"	½ of 17	"	600	" "
"	½ of 17	David Patterson	600	" "
"	18	"	1,200	" "
103	11	William C. Connell and A. T. Brown	1,200	June 4, 1866.
"	12	" " "	1,500	" "
"	20 and 21	W'm Breck	2,400	May 15, "
"	22	A. E. Burr	1,200	Apr'l 15, "
"	23 and 24	E'd Mellen and Dennis Tierney	2,600	Nov. 4, 1865.
105	1 and 2	William Breck	2,100	Feb'y 19, 1866.
"	3	D. R. Maiven	1,100	May 1, "
"	4	"	1,300	Oct. 23, "
"	13	Henry Gunster	1,400	April 2, "
"	16	H. R. and M. Hughes	1,200	Dec. 20, "
"	17	Lewis Pugh	1,200	" "
106	1 and 2	Alfred Hand	1,500	March 1, "
"	23	1st German M. E. Church	1,000	Dec. 8, "
107	1	A. Frothingham	1,200	Oct. 25, 1865.
"	6 and 7	Mary H. Silkman	2,000	May 21, 1866.
"	11	E. E. Hill	900	March 14, "
"	12	Charles H. Silkman	1,250	May 21, "
"	13 and 14	William Banowman	2,700	June 14, "
"	18 and 19	James S. Slocum	1,500	May 4, "
"	20	Francis C. Oakford	1,000	" "
"	21, 22, 23, and 24	William Connell	3,000	April 23, "
54	5, 6, 7, and part of 8	James Connell	2,790	Sept. 27, "
"	3 and part of 4	George Fisher	1,200	May 3, "
106	13	Thomas Collins	1,800	March 29, 1867.
107	17	J Shopland	1,540	Aug. 20, "
108	20 and 21	George Foster	2,400	Dec. 21, 1866.
"	22, 23, and 24	Sidney Broadbent	4,500	June 19, 1867.
55	6, 7, 8, 9, and part of 10	A. G. Gilmore	5,000	Dec. 20, 1866.
105	11 and 12	A. H. Conrsen	2,200	May 1, "

The foregoing is the paper marked "B," and referred to in the annexed answer.

63 In the circuit court of the United States for the western district of Pennsylvania in equity.

RICHARD M. BLATCHFORD AND JOHN B. NEWman, trustees, suing for the use of Henry Beckett, an alien, and Joseph Lloyd, a citizen of the State of New Jersey,
vs.
THE SUSQUEHANNA & WYOMING VALLEY RAILroad and Coal Company, a corporation created by the State of Pennsylvania.

These repliants, Richard M. Blatchford and John B. Newman, trustees as aforesaid, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove the said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by those repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all of which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and they humbly pray as in and by their said bill they have already prayed.

64 No. 9, May term, 1867, in equity.

BLATCHFORD AND NEWMAN
vs.
THE S. & W. V. R. R. & COAL CO.

And now, to wit, April 22nd, 1868, this case came on to be heard on bill, answer, and affidavits, for a preliminary injunction and appointment of a receiver, and was argued on part of complainants by C. A. Seward and Theodore Cuyler, esqs., and for respondents by Messrs. Hand and Hodges, esqrs.
C. A. V.

65 BLATCHFORD AND NEWMAN, TRUStees, &c.,
vs.
THE SUSQUEHANNA AND WYOMING VALLEY Railroad & Coal Co.

April 25, 1868, the motion of complainants for an interlocutory decree and injunction is granted to aid them in the exercise of the power to them reserved and secured by the mortgage upon which this bill is filed, to enter upon and take actual and entire possession of all and singular the property, hereditaments, and premises mortgaged, and, through the agency of such person or persons as may, under the direction of this court, be appointed from time to time, to collect and receive the produce and profits of the said company's mines and property by

said mortgage conveyed, until the same shall, by proper judicial proceedings, be sold, and until the further order of this court.

Per curiam.

Bond, $100,000.

66 Circuit court of the United States for the western district of Penn'a.

BLATCHFORD ET AL.
vs.
THE SUSQUEHANNA AND WYOMING VALLEY Railroad & Coal Company.

And now, April 27th, A. D. 1868, on motion of Theodore Cuyler, esqr., for the complainants, it is ordered and decreed that Isaac C. Price, esqr., be appointed receiver, under and in pursuance of the order of the court made in this case on the twenty-fourth day of April, instant. And it is further ordered that the bond and security to be given by the said receiver may be approved by the Honorable John Cadwalader, judge of the United States district court for the eastern district of Pennsylvania, the said bond so approved to be filed of record in this court before the said receiver shall enter upon his duties.

Per curiam.

(Duplicate.)

67 In the circuit court of the United States for the western dist. of Pa., in equity.

RICHARD M. BLATCHFORD AND J. B. NEWMAN, trustees, &c.,
vs.
THE SUSQUEHANNA AND WYOMING VALLEY R. R. and Coal Company.

Know all men by these presents that Isaac C. Price, of the city of Philadelphia, attorney at law, and Henry Beckett, of Bordentown, in the county of Burlington and State of New Jersey, are held and firmly bound unto "The Susquehanna and Wyoming Valley Railroad and Coal Company" in the sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said "The Susquehanna and Wyoming Valley Railroad and Coal Company," their certain attorneys, successors, and assigns, to which payment, well and truly to be made, we do, jointly and severally, bind and oblige ourselves, our respective heirs, executors, and administrators, and every of them, firmly by these presents, sealed with our seals, dated the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas, in a certain motion for the granting of an injunction and appointment of a receiver heretofore made in the above-entitled cause, it was, on the twenty-fourth day of April, instant, (1868,) ordered and decreed in the words following, viz:

"The motion of complainants for an interlocutory decree and
68 injunction is granted to aid them in the exercise of the power to them reserved and secured by the mortgage upon which this bill is filed to enter upon and take actual and entire possession of all and

singular the property, hereditaments, and premises mortgaged, and, through the agency of such person or persons as may, under the direction of this court, be appointed from time to time, to collect and receive the produce and profits of the said company's mines and property by said mortgage conveyed, until the same shall, by proper judicial proceedings, be sold, and until the further order of this court.

And whereas, also, afterwards, on the twenty-seventh day of April, instant, the said Isaac C. Price was appointed receiver under and in pursuance of the above-recited order and decree, to wit:

"And now, April 27th, A. D. 1868, on motion of Theodore Cuyler, esqr., for the complainants, it is ordered and decreed that Isaac C. Price, esqr., be appointed receiver under and in pursuance of the order of the court made in this case on the twenty-fourth day of April, instant. And it is further ordered that the bond and security to be given by the said receiver may be approved by the Honorable John Cadwalader, judge of the United States district court for the eastern district of Pennsylvania, the said bond so approved to be filed of record in this court before the said receiver shall enter upon his duties."

69 Now, therefore, the condition of this bond is such that if the said Isaac C. Price shall and do well and truly perform the duty and execute the office of receiver as aforesaid, and shall comply with the aforesaid order and decree of the court, and with all orders and decrees of the court to his said office, and duly pertaining, and shall render a just and true account, and duly apply and account for all moneys coming to his hands as aforesaid, then the above obligation to be void, or else to be and remain in full force and virtue.

ISAAC C. PRICE. [I. C. P.]
HENRY BECKETT. [I. C. P.]

Sealed and delivered in the presence of us:
J. W. NEWMAN.

EASTERN DISTRICT OF PENNSYLVANIA, *Philadelphia, ss:*

I have examined on oath the above-named Henry Beckett, who is personally known to me, and am of opinion that he is a good and sufficient security in the amount of the above obligation.

Phila., 25 April, 1868.

JOHN CADWALADER,
District Judge.

70 U. S. circuit court, W. D. of Pa., No. 7, May term, 1867, in equity.

R. M. BLATCHFORD AND J. B. NEWMAN, Trustees, &c.,
vs.
THE SUSQUEHANNA AND WYOMING VALLEY Railroad and Coal Company.

And now, to wit, April 28th, 1869, this cause came on to be heard on bill, answer, and replication before Honorables Robert G. Grier and Wilson McCandless, LL. D., and was argued by counsel of complainant to the hour of adjournment. April 29th, 1869, the argument is proceeded with on part of respondents, and, after a full hearing, is concluded.

C. A. V.

71 In the circuit court.

RICHARD M. BLATCHFORD AND JOHN B. Newman, trustees, &c.,
vs.
THE SUSQUEHANNA AND WYOMING VALLEY Railroad and Coal Company.
} Decision of the court.

Let complainants' counsel draw a decree that an order shall issue for the sale of all the property mentioned in the mortgage, but not for the real estate purchased in 1864, called the Vetterlien Estate, which decree to be final, unless the respondents pay into court within one month the interest due on the mortgage to this date, together with the costs; then this bill to be dismissed.

The clerk will notify the parties.

Per curiam.

Pittsburgh, May 4th, 1869.

72 At a circuit court of the United States for the western district of Pennsylvania, sitting in equity, held at the city of Pittsburgh, on the 14th day of July, A. D. 1869.

Present, Hon. Robert G. Grier, circuit judge; Hon. Wilson McCandless, district judge.

No. 9, May term, 1867.

RICHARD M. BLATCHFORD AND JOHN B. NEWman, trustees, suing for the use of Henry Beckett, an alien, and Joseph Loyd, a citizen of the State of New Jersey,
vs.
THE SUSQUEHANNA AND WYOMING VALLEY Railroad and Coal Company, a corporation created by the State of Pennsylvania.

This cause coming on to be heard upon the bill, answer, and replication herein, and Mr. Theodore Cuyler and Mr. Clarence A. Seward having been heard on behalf of the complainants, and Mr. William H. Jessup and Mr. Edward F. Hodges, having been heard on behalf of the defendants, and due deliberation having by said court been
73 had, it is, on motion of the said counsel for the said complainants, ordered, adjudged, and decreed that the defendants above named pay to the claimants above named, within one month from the date thereof, the sum of seventy-four thousand five hundred and fifty-one dollars and twelve cents, (74,551 12,) the interest which at the time of such payment shall be due on the mortgage and the bonds accompanying the same, and secured thereby, and now outstanding, specified, and set forth in the bill of complaint in this cause, together with interest thereon from the date of this decree to the time of such payment, and the costs of this suit to be taxed.

And, on like motion, it is further ordered, adjudged, and decreed that if such payment be made as is hereinbefore provided, the bill of complaint herein shall stand dismissed.

And it is, on like motion, further ordered, adjudged, and decreed that in case said defendant shall not so pay said interest and costs as afore-

said within the time aforesaid, that then Isaac C. Price, esquire, be, and is hereby, appointed as master of this court to sell the portions of the premises hereinafter described in the mortgage specified in the bill of complaint herein and hereinafter particularly described, or so much thereof as may be sufficient to raise the amount due to the complainants for the principal and interest of the said outstanding bonds, being
the sum of four hundred and two thousand five hundred and
74 fifty-one dollars and twelve cents, (402,551 12,) together with the costs of this suit, and which shall be sold in the following order, to wit: The master herein appointed shall first sell all that tract and parcel of land situate, lying, and being in the township of Lackawanna, county of Luzerne, and State of Pennsylvania, which said tract or parcel of land is bounded and described as follows, viz: Beginning at the Lackawanna River, at the township line of Providence and Lackawanna; thence south fifty-two (52) degrees thirty (30) minutes east eight hundred and ten (810) rods to a hemlock tree; thence south thirty-seven (37) degrees west seventy-six and a half (76½) rods to a post; thence north fifty-two (52) degrees thirty (30) minutes west three hundred and forty (340) perches; thence north sixty degrees west thirty-three perches; thence north fifty-two (52) degrees thirty (30) minutes west one hundred and fifty-seven and a quarter (157¼) perches to a stone corner; thence south thirty-seven (37) degrees west thirty and a half (30½) perches to a white oak tree; thence north fifty-three (53) degrees thirty minutes west two hundred and fifty-four (254) perches to a post; thence south thirty-six (36) degrees thirty (30) minutes west thirty-two and three-tenths ($32\frac{3}{10}$) perches to a stone corner; thence north fifty-three (53) degrees thirty minutes west fifty (50) perches to a post; thence north forty-seven degrees east ninety-nine and a half (99½) perches; thence north nineteen (19) degrees west twenty-one (21) perches to the Lackawanna River; thence by the said river, by its different
courses, to the place of beginning, containing four hundred and
75 sixty-seven (467) acres and one hundred and fifty-eight (158) perches, be the same more or less. And all that lot, piece, and parcel of land situate in the township of Lackawanna, Luzerne County, and State aforesaid, bounded and described as follows, viz: Beginning at a stake and stones corner; thence south fifty-four and a half degrees east two hundred and fifty-four perches to a corner white-oak tree; thence south thirty-five degrees and a half west about thirty-two perches to the line of lands formerly of Silas Coray; thence north fifty-four and a half degrees west along the said land late of Coray two hundred and fifty-four perches to a corner; and thence north thirty-five and a half degrees east thirty-two perches, or thereabouts, to a corner, the place of beginning, containing fifty acres of land, or thereabouts, be the same more or less. Also, all that certain tract or piece of land situate in the township of Lackawanna, bounded and described as follows, to wit: Beginning at a white-oak sapling on the bank of the Lackawanna River, at the northeast corner of the Coray lot; thence south fifty-one degrees thirty minutes east one hundred and six perches to a stake and stones for a corner; thence north forty-seven degrees thirty minutes east ninety-two and five-tenths perches to a hemlock for a corner; thence north eighteen degrees and a half west twenty-one and six-tenths perches to the Lackawanna River; thence down the said
river, by the courses thereof, to a point in the said river opposite
76 the place of beginning; thence to the place of beginning, containing forty-five acres and fifty-four perches, more or less. The master shall sell, next in order, all that certain tract or piece of land situate

in Pittston Township, county of Luzerne, and State aforesaid, beginning at the corner near or at the intersection of a cross-road leading from the main road down the Lackawanna River, from near the house of Richard H. Brown, with the old township road leading to Pittston Village; thence along the said road south forty-three degrees fifteen minutes west sixty-four and two-tenths perches to the Searles lot; thence north forty-nine degrees west two hundred and fourteen perches to the Lackawanna River; thence by the courses of the said river and up the same sixty-four perches; thence south forty-nine degrees east two hundred and nine perches to the beginning, containing eighty-four acres and thirty-eight perches, it being the lot on which Richard Brown resides, being the same premises which Henry Beckett and wife, by indenture dated the nineteenth day of July, A. D. 1859, intended to be recorded, granted, and conveyed unto the said "The Susquehanna and Wyoming Valley Railroad and Coal Company," their successors and assigns, forever, excepting and reserving as respects the said tract of eighty-four acres and thirty-eight perches as is excepted and reserved in and by a certain indenture bearing date the sixteenth day of August,
A. D. 1855, executed by Richard H. Brown to Samuel Smith, and
77 recorded in Luzerne County aforesaid in deed book No. 18, page
172; and also all and singular the lands, tenements, and hereditaments conveyed by the said Henry Beckett to the said "The Susquehanna and Wyoming Valley Railroad and Coal Company" by the said indenture of the nineteenth day of July, A. D. 1859, and all steam-engines, machinery, and implements of mineing, boats, and all other matters and things used and employed in working the mines and carrying coal, or in any wise appertaining thereto, (except as herein provided.) The master shall sell, next in order, all that certain tract of land situate and being in the borough of Scranton, (late Providence Township,) Luzerne County, and State aforesaid, bounded and described as follows, to wit: Commencing at a corner in Penn avenue, (established by proceedings in partion in the court of common pleas of the said county, between the late Elisha Hitchcock, deceased, and the Lackawanna Iron and Coal Company, near the intersection of Penn avenue and Vine street, as appears by the plot of the said borough;) thence in a southwesterly course, on the line of division between the said Hitchcock and the said iron and coal company, (as appears by the said proceedings in partition,) eighty six rods to a post for a corner, (made and established by the said partition;) thence south fifty-four and a half degrees east as originally run, to another corner, now in the enclosure of Joseph
Scranton, made by the said proceedings in partition; thence in a
78 northeasterly course, on a line made by the said partition, forty-three rods; thence south fifty-four and a half degrees east as originally run and established by the said partition, to the line of Providence Township, as established at the date of the original official survey; thence by the said township line north thirty-five and a half degrees east forty-three rods to the easterly line of certified lot number thirty-five, (35;) thence by the said original line north fifty-four and a half degrees west, as originally run, to a point where the said line intersects the center of Adams avenue, as per the plot of the avenues and streets of the said borough; thence westerly along the center of Adams avenue to the center of the intersection of the said avenue with Mulberry street; thence along the center of Mulberry street, in a northerly course, to the center of the intersection of Mulberry street and Washington avenue; thence, in a westerly course, along the center of Washington avenue two hundred and ninety feet to a point that

will intersect the division line between lots numbered six (6) and seven (7) in block number one hundred and one, (101,) and the division line between lots numbered six (6) and seven (7) in block number forty-nine, (49;) thence in a northerly course along the division line between the said lots to the center of an alley, sixteen feet wide, extending from Vine to Mulberry streets, and from Mulberry to Linden streets, dividing in equal parts blocks numbers forty-nine and fifty; thence in an easterly course along the said alley's center to the original easterly
79 line of said certified lot number thirty-five, (35;) thence north fifty-four and a half degrees west along the said line to the place of beginning, containing about one hundred and ninety-five acres, more or less, being the same premises which the said Henry Beckett and wife, by indenture dated the nineteenth day of July, A. D. 1859, then intended to be recorded, granted, and conveyed unto the said "The Susquehanna and Wyoming Valley Railroad and Coal Company," their successors and assigns, forever, excepting therefrom certain lots conveyed by Elisha Hitchcock to his son Ebenezer. Also, other reservations particularly mentioned and described in a deed from Elisha Hitchcock to George Sanderson, dated the fifth day of April, A. D. 1856, recorded at Wilkesbarre, in deed book volume 66, page 48, and the reservation of lots hereinafter mentioned, it being intended hereby to sell the whole tract conveyed by a certain Hitchcock to George Sanderson, with the reservations therein made, containing then two hundred and twenty-one (221) acres, except so much of the said tract as is reserved by a deed from George Sanderson and wife to Henry Beckett, dated the twentieth day of June, A. D. 1859, therein particularly described, and such lots as the said Sanderson had theretobefore contracted to sell, a schedule of which is to the said deed from Sanderson and wife to the said Henry Beckett annexed, and als all the avenues, streets, and alleys conveyed to the said borough of Scranton, and excepting the fol-
80 lowing lots, as laid out upon the town plot of Scranton, to wit: Lots number four and five, (4 & 5,) in block number forty-nine, (49;) lots three, (3,) four, (4,) five, (5,) six, (6,) twenty-five, (25,) twenty-six, (26,) in block one hundred and one, (101;) lots eight, (8,) nine, (9,) ten, (10,) block one hundred and seven, (107;) lots thirteen, (13,) fourteen, fifteen, and sixteen, (14, 15, & 16,) in block one hundred and eight, (108;) lots seventeen, (17,) eighteen, (18,) nineteen, (19,) in block one hundred and eight, (108;) lots nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) thirteen, (13,) in block thirty-seven, (37;) lots one, (1,) two, (2,) block fifty-four, (54;) lot three, (3,) block thirty-six, (36;) lots two, (2,) four, (4,) and five, (5,) block forty-eight, (48;) lots one, (1,) two, (2,) three, (3,) and six, (6,) block forty-nine, (49;) lots one, (1,) two, (2,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) seventeen, (17,) and eighteen, (18,) in block one hundred and one, (101;) lots eleven, (11,) twelve, (12,) twenty, (20,) twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) and twenty-four, (24,) in block one hundred and three, (103;) lots one, (1,) two, (2,) three, (3,) four, (4,) thirteen, (13,) sixteen, (16,) seventeen, eleven, (11,) and twelve, (12,) in block one hundred and five, (105;) lots one, (1,) two, (2,) thirteen, (13,) and twenty-three, (23,) in block one hundred and six, (106;) lots one, (1,) six, (6,) seven, (7,) eleven, (11,) twelve, (12,) thirteen, (13,) fourteen, (14,) eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) and seventeen, (17,) in block one hundred and seven, (107;) lots five, (5,) six, (6,) seven, (7,) and part of eight, (8,) three and part of four, (3 & part of 4,) in block fifty-four, (54;) lots twenty, (20,) twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) and twenty-four,

(24,) in block one hundred and eight, (108;) lots six, (6,) seven, (7,) eight, (8,) nine, (9,) and part of ten, (10,) in block fifty-five, (55;)
81 all of which excepted lots are excepted from the effect of this decree and to be held subject to the further order and direction of this court; and the said last-mentioned tract shall be sold in portions in the following order, to wit: All that portion divided into lots and lying west of the Hitchcock reservation shall be first sold in separate lots, as they are laid out upon the town plot of Scranton, with such reservation of coal and the right to mine and remove the same as is contained in the deeds for lots heretofore made by said defendant on the town plot of Scranton; all that portion divided into lots and lying east of said Hitchcock reservation shall next be sold, in separate lots, as they are laid out by said defendant, with a like reservation of the coal. The said master shall sell, next in order, all the coal reserved heretofore by the defendants and to be reserved by the said master, and lying in all that portion of the said mortgaged premises west of the Hitchcock reservation. The said master shall, next, all the coal reserved under the lots lying east of the said Hitchcock reservation, and all the surface not laid off into town lots. That said mortgaged prem-
82 ises be sold at public auction. That the said sale be made under the direction of the said master, and that the said master give public notice of the time and place of said sale by publication at least once a week for four weeks in one daily paper of each of the cities of New York and Philadelphia, and at least once a week, for four weeks, in a newspaper published at Scranton, and also in one newspaper published at Wilkesbarre, in Luzerne County, Pennsylvania, and by such and so many handbills as may deem advisable; and that Henry Beckett and Joseph Loyd, for whose use this suit was brought, may become the purchasers at such sale; that the master execute a deed or deeds to the purchaser or purchasers of the said premises on the said sale; and that the said master pay to the complainants, out of the proceeds of said sale, their costs in this suit to be taxed, and also the amount of said outstanding bonds, together with legal interest thereon, or so much as the purchase-money of the mortgaged premises will pay of the same; and that the master take the receipt of said complainants for the amount so paid, and file the same with his report, and that he bring the surplus moneys arising from said sale, if any there be, into court to abide the further order of the court.

83 And it is further ordered, adjudged, and decreed that the defendants, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim in and to said premises, and every part and parcel thereof.

And it is further ordered, adjudged, and decreed that the purchaser or purchasers of said premises, at said sale, be let into the possession thereof, and that any of the parties in this case who may be in the possession of the said premises, or of any part thereof, and any person who since the commencement of this suit has come into possession of them, or either of them, deliver possession thereof to such purchaser or purchasers on the production of the master's deed or deeds of such premises, and a certified copy of the order confirming the report of the said master.

And it is further ordered, adjudged, and decreed, that if the money arising from the said sale be insufficient to pay the amount of said outstanding bonds and the interest thereon, that the said master specify the amount of such deficiency in his report of the sale.

And it is further ordered, adjudged, and decred that the sale of the

aforesaid premises shall take place in such order as above specified, and on such terms as the master may direct.

84 And it is further ordered, adjudged, and decreed that the sale authorized by the decree shall not extend to the premises known as the Vetterlien tract, and described in an exhibit to the bill of complaint in this case, nor to any of the property of the defendant acquired after the making and execution of the mortgage set forth in the bill, and as to such after acquired property the prayer of the bill is denied.

R. C. GRIER, *Circuit Judge.*
WILSON McCANDLESS,
District Judge.

The above decree is as agreed upon.

E. F. HODGES, *for D'f'ts.*
ISAAC C. PRICE,
For T. Cuyler, for Pl'ff's.

JULY 27TH, 1869.

85 Circuit court of the United States for the western district of Pennsylvania, in equity.

R. M. BLATCHFORD & AL., TRUSTEES,
vs.
THE SUS. & W. VALLEY R. R. & COAL CO.

Before Justice Grier, July 14, 1869:

It was ordered in the above cause that the defendants furnish security in the sum of ten thousand dollars for the prosecution of their appeal, with security as aforesaid to operate as a supersedas.

R. C. GRIER,
Circuit Judge.

86 Circuit court of the United States for the western district of Pennsylvania, in equity.

R. M. BLATCHFORD & AL., TRUSTEES,
vs.
THE SUS. & WY. V. R. R. & COAL CO.

In the above case it was agreed that the defendants have until ten days from the filing of the decree, (bearing date the 14th of July,) to enter their appeal and furnish securities for the prosecution thereof.

ISAAC C. PRICE,
For T. Cuyler, for Pl'ffs.
E. F. HODGES, *for Def't.*

87 In the Circuit court of the United States for the western district of Pennsylvania, in equity.

R. M. BLATCHFORD AND JNO. B. NEWMAN,
trustees, &c.,
vs.
THE SUSQUEHANNA AND WYOMING VALLEY
Railroad and Coal Company.

Kno all men by these presents that "The Susquehanna and Wyoming Valley Railroad and Coal Company," Courtlandt Palmer, and

George W. Hodges are held and firmly bound unto R. M. Blatchford and Jno. B. Newman, trustees, who sue for Henry Beckett and Joseph Loyd, in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said R. M. Blatchford and Jno. B. Newman, trustees for said Henry Beckett and Joseph Loyd, their certain attorney, executors, administrators, successors, or assigns, to which payment, well and truly to be made, we do bind ourselves, jointly and severally, our heirs, executors, administrators, and successors, firmly by these presents, sealed with our seals and dated the second day of August, in the year of our Lord one thousand eight hundred and sixty-nine.

The condition of this obligation is such that whereas the said The Susquehanna and Wyoming Vally Railroad and Coal Company, who are defendants in a certain suit brought in equity in the circuit
88 court of the United States for the western district of Pennsylvania, wherein the said R. M. Blatchford and Jno. B. Newman, trustees, suing for Henry Beckett and Joseph Loyd, are plaintiffs, as of No. 9, May term, 1867, in which suit a final decree has been ordered, as will appear fully of record, from which decree the said defendants have appealed to the Supreme Court of the United States:

Now, if the said appellant shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise remain in full force and virtue.

The Susquehanna and Wyoming Valley Railroad and Coal
[SEAL.] Company, by their vice-president and acting president—
GEO. W. HODGES. [SEAL.]
COURTLANDT PALMER. [L. S.]
GEO. W. HODGES. [L. S.]

In presence of—
E. F. HODGES.

89 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

On this 5th day of August, 1869, personally appeared before me Courtlandt Palmer, of the city of New York, to me personally known, and made oath that he is worth the sum of one hundred and fifty thousand dollars over and above his just debts and liabilities.

COURTLANDT PALMER.

Subscribed and sworn to before this 5th day of August, 1869.
R. E. STILWELL,
S. S. Court Southern District of New York.

WESTERN DISTRICT OF PENN'A,
Pittsburgh, August 6th, 1869:

Then personally appeared Geo. W. Hodges, one of the signers of the within bond, and made oath that he is worth ten thousand dollars over and above his just debts & liabilities.

GEO. W. HODGES.

Subscribed and sworn before me this sixth day of August, A. D. 1869.
S. C. McCANDLESS,
U. S. Commissioner.

Bond approved per curiam, Aug. 6, '69.

90 In the circuit court of the United States for the western district of Pennsylvania, No. 9, May term, 1867, in equity.

R. M. BLATCHFORD AND J. B. NEWMAN, TRUSTEES,
vs.
THE SUSQUEHANNA AND WYOMING VALLEY Railrod and Coal Company.

And now, August 2nd, 1869, the defendants appeal from the final decree of the court in this case to the Supreme Court of the United States, and pray that a citation may be granted according to act of Congress in such case made and provided.

HAND & POST,
Solicitors for Defendants.

In the above cause appeal is allowed, and bond approved, and citation ordered to issue per curiam, Aug. 6, 1869.

91 UNITED STATES OF AMERICA, *ss:*

To R. M. Blatchford, and J. B. Newman, trustees, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to an appeal filed in the clerk's office of the circuit court for the western district of Penn'a, wherein the Susquehanna and Wyoming Valley Railroad and Coal Company is appellant, and you are appellees, to show cause, if any there be, why the final decree in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WILSON McCANDLESS,
U. S. District Judge, sitting at Circuit.

AUG. 6, '69.

92 (Indorsed:) Original.

I accept service of this writ for R. M. Blatchford and J. B. Newman, trustees.

THEO. CUYLER, *Att'y.*

OCT. 22, 1869.

93 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

I, Henry Sproul, clerk of the circuit court of the United States in and for the western district of Pennsylvania, do hereby certify that the foregoing is a true and correct copy of the record and proceedings had in the suit in equity, at No. 9, of May term, 1867, wherein Richard M. Blatchford, a citizen of the State of New York, and John B. Newman, a citizen of the State of Pennsylvania, trustees, who sue for the use of Henry Beckett, a resident of Bordentown, in the State of New Jersey, and an alien and a subject of the Queen of the United Kingdom of Great Britain and Ireland, and of Joseph Loyd, a citizen of the State of New Jersey, are complainants, and The Susquehanna and Wyoming Valley Railroad and Coal Company, a corporation created under and by virtue of the laws of Pennsylvania, is respondent; and do further certify that I have carefully examined and compared the same with the original, and that it is a true and exact copy thereof, as the same remains on file in said clerk's office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Pittsburgh this 6th day of November, A. D. 1869, and in the ninety-fourth year of the independence of the said United States.

[SEAL.] H. SPROUL, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

(Indorsement on cover:) No. 291. The Susquehanna and Wyoming Valley and Coal Company, appellants, vs. R. M. Blatchford and J. B. Newman, trustees. W. Pennsylvania C. C. U. S.
Filed 26th November, 1869.

SUPREME COURT OF THE UNITED STATES.

THE SUS. AND WYOMING VALLEY R. R. AND COAL CO., APPT.

vs.

R. M. BLATCHFORD AND J. B. NEWMAN, TRS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENN.

APPELLANTS' BRIEF.

A.

THIS record discloses two lines of defence to the plaintiffs' action.

One, presented in the demurrer, denies the jurisdiction of this tribunal, for the reason that one of the plaintiffs is disqualified by his alleged citizenship to sue in the Federal Courts.

The other, appearing in the charges and denials of the bill, answer and replication, resists the plaintiffs' right to a decree under the provisions of the mortgage upon which the bill is founded.

Under the practice of this Court, the questions first for discussion are those that arise upon

THE DEMURRER.

The bill states that the defendant corporation is organized under a law of Pennsylvania. That the plaintiff, R. M. Blatchford, is a citizen of the State of New York; the plaintiff, J. B. Newman, is a citizen of the State of Pennsylvania, and that they as trustee's plaintiffs "sue solely for the use of Henry Beckett," an alien, and "Joseph Loyd, a citizen," both residing in New Jersey. The suit was brought in the Circuit Court of the United States for the western district of Pennsylvania. The demurrer avers that the plaintiff Newman and the defendant company, being citizens of the same State, the Court has not jurisdiction of the cause.

The simple question is thus presented, whether the jurisdiction of the Federal Court depends upon the citizenship of the trustee's plaintiffs, or of the parties for whose benefit the suit is averred to be brought.

The appellant refers to a few leading decisions of this Court, in justification of the demurrer.

To sustain the jurisdiction of the Federal Court, each plaintiff must be qualified to sue, and each defendant must be liable to be sued by them, under the provisions of the 11th section of the judiciary act.

Strawbridge *et al. vs.* Curtis et al. 3 Cranch, 267.
Ward *vs.* Arridondo, 1 Paine, 410.
Conolly *vs.* Taylor, 2 Pet. Rep. 556.

Executors and adminstrators, trustees and corporations, qualified by citizenship, may sue in the Federal Courts, though those for whose benefit the suits are brought may be disqualified.

Chappedelaim *et al. vs.* Dechenaux, 4 Cranch, R. 306, 12 Pet. 171.
Osborne *vs.* Bank of United States, 9 Wheat. 856.
Louisville R. R. *vs.* Letson, 2 How. 497.
Irwin *vs.* Lowry, 14 Pet. 298.
Bonafee *vs.* Williams, 3 How. 574.

These authorities establish the rule that in all suits by or against trustees at law, or in equity, however the interest of beneficiaries may be disclosed, the jurisdiction depends exclusively upon the citizenship of the parties to the suit appearing on the record.

A supposed analogy between the trust relations of the present plaintiffs, and those of the plaintiffs in certain cases heretofore decided in this Court, founded upon official bonds, affords the only explanation of the judgment rendered in the Court below on this demurrer.

Those cases are three, viz: —

Brown and al. *vs* Strode, 5 Cranch, 303.
McNutt *vs.* Bland and al. 2 How. 10.
Huff and al. *vs.* Hutchinson, 14 How. 586.

Decided below against him

These are all suits upon bonds given under State laws to an officer having no interest in the subject matter, for the benefit of whom it may concern.

The luminous points in these cases, so far as they reflect upon the question under consideration, are, —

FIRST.

The nominal plaintiffs in these suits were not in any substantial sense parties to the record.

1. They had no legal interest in or equitable title to relief touching the thing in suit. The bonds are creatures of the law in which the position of obligee is simply formal, like that of John Doe or Richard Roe, in old actions of ejectment.

Fenn *vs.* Granger, 3 Camp. Rep. 177.

2. The obligees in those bonds were wholly without either interest, power, or responsibility, not even for costs, in suits brought upon them. In instituting or controlling such suits, they were not in any sense *actors*.

3. In suits upon such bonds, the injury counted upon is charged to be done to the party bringing the suit, and not to the obligees, the nominal plaintiffs.

In McNutt *vs.* Bland, the Court say of the plaintiff, "As an instrument of State law to afford a remedy against a sheriff and his sureties, his name is in the bond and to the suit upon it; but in no just view of the constitution or law can he be considered as a litigant party: both look to things, not names — to actors in controversies and suits, not to the mere forms or inactive instruments used in conducting them in virtue of some positive law. . . .

"When the plaintiff is by some positive law compelled to use the name of a public officer, who has not, or ever had, any interest or control over it, the courts of the United States will not consider any others as parties to the suit than the persons between whom the litigation before them exists."

SECOND.

The nominal plaintiffs in these suits were not *trustees*. They held nothing for the use of another. They controlled nothing for the benefit of another. They had no power over the subject matter out of which a trust could spring. There is no analogy between their position and character and the position and character of trustees. The one is a creation of the law — impersonal — having only a quasi or vicarious existence, without authority over, or interest in, or responsibility for the thing with which his official name is associated by operation of law and not of will. The other, a man of "sound mind," is by virtue of his own contract entrusted with something over which he exercises power and care, and in which he has a legal interest and for which he is responsible.

THIRD.

In all those cases there arose a conflict between the laws of the United States and the several States. The parties in interest were compelled by the State laws to sue in the name of the official obligee in the bonds, at the same time that they by the United States laws were entitled to urge their litigation to the federal tribunal.

In Payne *vs.* Hook, 7 Wal. 425, the Court say, —

"The jurisdiction of Courts of the United States over controversies between citizens of different States, cannot be impaired by the laws of the States which describe modes of redress in their Courts, or which regulate the distribution of their judicial power."

This Court has always held that the party in interest was the litigant party where he was by the laws of the State compelled to find his remedy under the bond sued in the name of the obligee. The principle announced in cases of such conflict has been the received doctrine of this Court, from the earliest case down to Payne *vs.* Hook.

It is believed, then, that these three cases have no bearing upon the question presented by this demurrer.

If they bear upon the question at all, it is to reduce by elimination its terms, and leave us to inquire, Are the trustees in this case real plaintiffs, voluntarily assuming a position with actual power like executors and administrators, corporations and other trustees, or are they merely nominal, powerless plaintiffs, like official obligees in bonds given for the use of whom it may concern?

The appellant company maintains the real and potent character of the plaintiffs as trustees.

FIRST.

These relations to the *mortgage contract* are consistent only with the character of real, active prosecutors of the suit.

I. They are voluntary parties to the contract of mortgage, actually negotiating its terms and agreements.

Record, fol. 2, 9–18.

II. They in it make careful provision for their own personal advantage and protection.

1. They provide a commission of one per cent on sales of a certain part of the land mortgaged.

Record, fol. 25.

2. They are exempt from liability for permitting the company to remain in possession, and other causes.

Record, fol. 26.

III. They secure certain powers to themselves.

1. They may select these remedies in case of default.

Record, fol. 20.

2. They can take possession, and work the property in case of default.

Record, fol. 23.

3. They may sell lands and give deeds.

Record fol. 25.

4. They may invest funds.

5. They hold the legal title and must make all conveyances under it, and do all things incident to that position.

SECOND.

Their relations to *this suit* are those of actual and sole plaintiffs.

I. As grantees in the deed, they alone, or their grantees, can maintain suit upon it.

II. By special provision it is stipulated that they may proceed with a suit or take possession.

Record, fols. 20 and 25.

III. They call themselves *plaintiffs*, and say they, *as plaintiffs*, sue for the benefit of others.

IV. They alone have power over this suit. The bondholders cannot control it.

THIRD.

If they can or must do anything in the prosecution of this suit, which the beneficiaries cannot do, then are they real and not nominal parties, viz: —

I. Beneficiaries cannot sue upon a mortgage held in trust without making the trustees parties, plaintiffs or defendants.

II. Beneficiaries cannot use the names of trustees without leave in such a prosecution.

III. The beneficiaries for whom this mortgage is held, are not parties to it and cannot sue upon its covenants, or in any way protect the property. Their remedy is either upon their bonds directly against the appellants, or by suit in equity against the company, and in this case they must join the trustees as plaintiffs, or make them defendants.

We therefore affirm that these trustees are real and not nominal parties in this suit, and that the demurrrer must be sustained.

BILL, ANSWER AND REPLICATION.

In the bill to which the demurrer we have just considered, responded, the plaintiffs solicit the aid of the Court of Equity to enforce the sale of property described in a mortgage, to extend the grasp of that mortgage and the order of sale over property not owned by the mortgagor at its date, and, under the guise of a decree of distribution, to anticipate the maturity of the mortgage debt, by payment some years in advance of the term fixed in the deed.

A brief statement of a few pertinent and undisputed facts, will illustrate the issues presented to the Court and profitably introduce the discussion.

STATEMENT OF FACTS.

In 1859, Henry Beckett owned the property described in the mortgage, and conveyed it to the defendant company by deed dated July 19, 1859, significantly noted as "intended to" "be recorded."

On the 20th of April, 1860, the defendant company made the mortgage copied in the bill, in which the votes of the company are at length set out, and the property above named described in detail.

At the same time, the company issued five hundred bonds, for $1,000 each, payable on the first of December, A. D. 1875, in pursuance of the votes of its stockholders and directors.

Of the five hundred bonds thus issued by the company, only three hundred and twenty-eight were outstanding at the date of this bill.

In March, 1867, the plaintiffs filed this bill, setting out the mortgage, complaining of the non-payment of the interest coupons falling due Dec. 1, 1866, attached to said bonds, and praying for a sale of the property described in the mortgage, and that the proceeds be applied in payment of the interest warrants, and of the principal of the bonds.

The defendant company demurred to the bill. To this bill the defendant company filed the demurrer hereinbefore discussed.

The company filed its answer, and the plaintiffs put in their replication, and upon motion of the plaintiffs, the Court appointed a receiver, who has taken possession of the estate described in the mortgage, and of the after-acquired estate above named.

The parties have taken no proofs, and the issues are to be decided upon the effect given by the Court to the allegations of the plaintiffs and the responses of the defendant.

It is obvious that this is not a suit for the recovery of a money debt. The plaintiffs are not even by intendment creditors of the defendant company, nor have they any interest in the bonds or coupons, or any power over them.

How far the terms of this contract justify the plaintiffs in proceeding in this Court, and seeking the decree prayed for in the bill are the chief subjects of this investigation.

The appellants impeach the plaintiffs' pretensions in the following propositions: —

FIRST.

The Court has not Jurisdiction of the Cause.

I.

Newman, one of the plaintiffs, being a citizen of Pennsylvania, this Court can maintain jurisdiction only upon finding judicially that all the bonds secured by the mortgage and now outstanding are owned by parties qualified by citizenship to sue in the Federal courts of this district, and that this suit is brought for the benefit of such parties. The plaintiffs sufficiently allege such ownership in Beckett & Loyd, and that they are citizens of New Jersey. But the allegation thus necessary and thus made is not supported by the proof demanded of the plaintiffs.

1. In the answer, the defendant, in response to the bill, avers absolute ignorance of the ownership by Beckett of any of the bonds.

Record, folio 52.

2. In the answer, the defendant denies directly that Loyd owns any of the bonds.

Record, folios 50 and 52.

The fact of ownership in parties entitled to sue, stands thus denied and not proved.

II.

It is not denied that, since the decisions in DeWolf *vs.* Ribaud, 1 Pet. 476 and Phil. W. & B. R. R. Co. *vs.* Quigley, 21 How. 202, it has been necessary to test questions of citizenship, by plea in abatement; but in this case the defendant insists in answer to those authorities: —

1. That the rules of pleading in abatement demand that the defendants give the plaintiff a better writ, which cannot be done in a case like this, and therefore the plea need not *be in abatement.*

1 Saund. Rep. 274, n. 3, 284, n. 4.
Stephens on pleading, 431.
O'Mealy *vs.* Wilson, 4 Camp. 482.
Evans *vs.* Stevens, 4 T. R.

2. That the *citizenship* of Beckett and Loyd is not here in dispute. The question is, whether they, being citizens of New Jersey, are clothed with the proper character, or bear the necessary relation to the subject in controversy. Non-ownership is a defence to be pleaded in *bar*, not in abatement.

Barney *vs.* City of Baltimore, 6 Wallace, 280

3. When, in the course of the hearing upon the merits, matters are developed, which bring to the knowledge of the Court the fact that it has not jurisdiction, it will not further entertain the cause.

Thompson *vs.* R. R. Co.'s, 6 Wallace, 134.

SECOND.

The plaintiffs do not prove that the owners of the bonds, to the amount of fifty thousand dollars, have in writing, requested them to take this, or any proceeding to effect a sale of the trust property

I.

The trust deed makes such a request a condition precedent to any action at law or in equity by the trustees.

Record, page ~~[illegible]~~ 7, folio ~~[illegible]~~ 22 h 12

The plaintiffs must prove that this condition has been fulfilled.

Williams *vs.* Peyton, 4 Wheaton, 77.

II. h 12

The paper set forth on the twenty-fourth page of the bill, purporting to be a request by the bondholders to the trustees, asking them to commence this suit, is not authenticated by proof, and does not meet this condition.

1. The paper being in the hands of the plaintiffs, and the defendants not being charged with knowledge of it, the silence of the answer is not an admission that such a paper was ever made or delivered to the plaintiffs.

Moon and als. *vs.* Lockett, 2 Bibb R. (Ky.) 67 and 69.
2 Vol. Daniels Eq. Prac. page 834.

There is, then, no proof before the Court that such a paper was ever made.

2. If such a paper was made, there is no proof that Beckett and Loyd, the signers, were owners of the bonds.

THIRD.

The plaintiffs do not prove such a demand of the interest as to justify them in instituting proceedings to sell the property and pay off the mortgage debt.

I.

By the terms of the trust deed, to authorize a suit and support the prayer of this bill, a preliminary demand, having certain characteristics, must be made.

Record, fol. 20.

1. The demand required by this contract must be made in behalf of a bona fide holder of the bonds and coupons. If made by a party holding feloniously, or without right, it would be inoperative.

Roe on de West *vs.* Davis, 7 East. 363.

2. The consequence of a failure to pay for sixty days after demand, is a forfeiture of the defendant's interest. The demand, then, must be of an exact sum lawfully due to the holder of the bonds or coupons, and which of right should be paid by the defendant.

a. Hastening the maturity of a debt, is in the nature of a forfeiture.

Williamson *vs.* New Albany & Salem R. R.; Redfield on R. R. 2d, 439.
Nicolls *vs.* Maynard, 3 Atk. 519.
Thompson *vs.* Hudson, 2 Law Rep. (Eq.) 619.
Sterne *vs.* Beck, 1 Degex Jones & Smith, Rep. 598.

b. A demand, to work a forfeiture, must be of the exact sum.

Bradstreet *vs.* Clark, 21 Pick. 389.
Shirley *vs.* Shattuck, 4 Cush. 470.

c. To justify a suit even where no forfeiture results, the demand must be made in good faith, and for the sum believed to be due.

II.

What demand have the plaintiffs proved?

1. The bill does not allege any demand on behalf of Becket. It does allege, circumstantially, that Loyd demanded the payment of eighteen, and caused to be demanded payment of twenty coupons, each for the sum of $35, and each cut from one of the seventy-eight bonds held by him.

Record, fols. 33 and 34.

2. The defendant answers this charge by averring that its treasurer offered to pay the amount of these coupons after deducting the taxes due under the laws of the United States, and under the laws of Pennsylvania.

Record, fols. 53 and 55.

3. If the plaintiffs do not read this answer, there is no proof of any demand whatever. If they do read it, they must read the whole that relates to the subject. The whole paragraph relates to the demand charged in the bill, and is exactly responsive.

Parish *vs.* Koons, 1 Parsons. Select cases in Eq. (Penn.) 97.
2 Dan. Eq. 835.
Bartlett *vs.* Gilleth, 3 Russ. 156.
Pusey *vs.* Wright, 31 Penn. R. 387.
Reed *vs.* Whitichurch, 3 Sim. 562.
Adams *vs.* Adams, 22 Vt. R. 50.
Eberly *vs.* Graff, 21 Penn. 251.

4. The legal proof, then, shows just this; viz: Loyd demanded payment of thirty-eight coupons of $35 each, and the defendant offered to pay the amount due after deducting the taxes.

III.

This does not justify the trustees in commencing a suit; nor will it support their prayer for an order authorizing a sale of the mortgaged property, and the distribution of the avails in the payment of the principal of the bonds due in 1875, for

1. Loyd is not proved to be a bondholder; and a demand by him, or on his behalf, is not sufficient. This is true, whether the plaintiffs read the answer or not.

2. The demand of $35 for each coupon, was a demand for more money than the bondholder was entitled to receive. This vitiates the demand.

a. The tax being imposed by law, it was the defendant's right and duty, to deduct the amount from the coupons; and there was no more due to the bondholder than the sum of $35 less the amount of the tax.

U. S. Statutes, 1864, Tax law, § 112.
Statutes of Penn.
Haight *vs.* Railroad Co., 6 Wall. R. 15.
Bradstreet *vs.* Clarke, 21 Pick. 389.
Clopton *vs.* Phil. & Reading R. R. Co., 4 P. F. Smith, 356.

b. As failure to pay in compliance with demand, resulted in hastening the maturity of the debt (according to the terms in the trust deed), the exact sum which it was the defendants' duty to pay, should have been demanded.

Bradstreet *vs.* Clarke, *supra.*
1 Saunder's Rep, Williams, 286, n. 16.
Doe *vs.* Paul, 3 Carr & P. 614.
Shirley *vs.* Shattuck, 4 Cush. 480.

3. The offer by the defendants to pay the interest less the tax, neutralized the demand. After such an offer the demand is inefficient, not only to work a forfeiture, but even to support a suit for the amount justly due.

Dedekam *vs.* Vose, 3 Blatchford Rep. 46.

4. The demand is insufficient, inasmuch as it failed to state the numbers of the bonds from which the demanded coupons had been detached. A portion, viz, one hundred and seventy-two of the original bonds had been cancelled. It was the duty of the party making the demand to assert that the coupons were appurtenant to the yet outstanding bonds. The estate of the defendant cannot be forfeited by a refusal to pay coupons that were or might be portions of the cancelled bonds.

5. At all events, the Court will hesitate before passing a decree that shall sacrifice the property of the defendant company for no other reason than because its officers, in the exercise of their discretion, declined to comply with a demand which, to say the least, might be fictitious, and certainly was, to some extent, unlawful.

SUPREME COURT OF THE UNITED STATES.

No. 97.

The Susquehanna and Wyoming Valley Railroad and Coal Company,

Appellants,

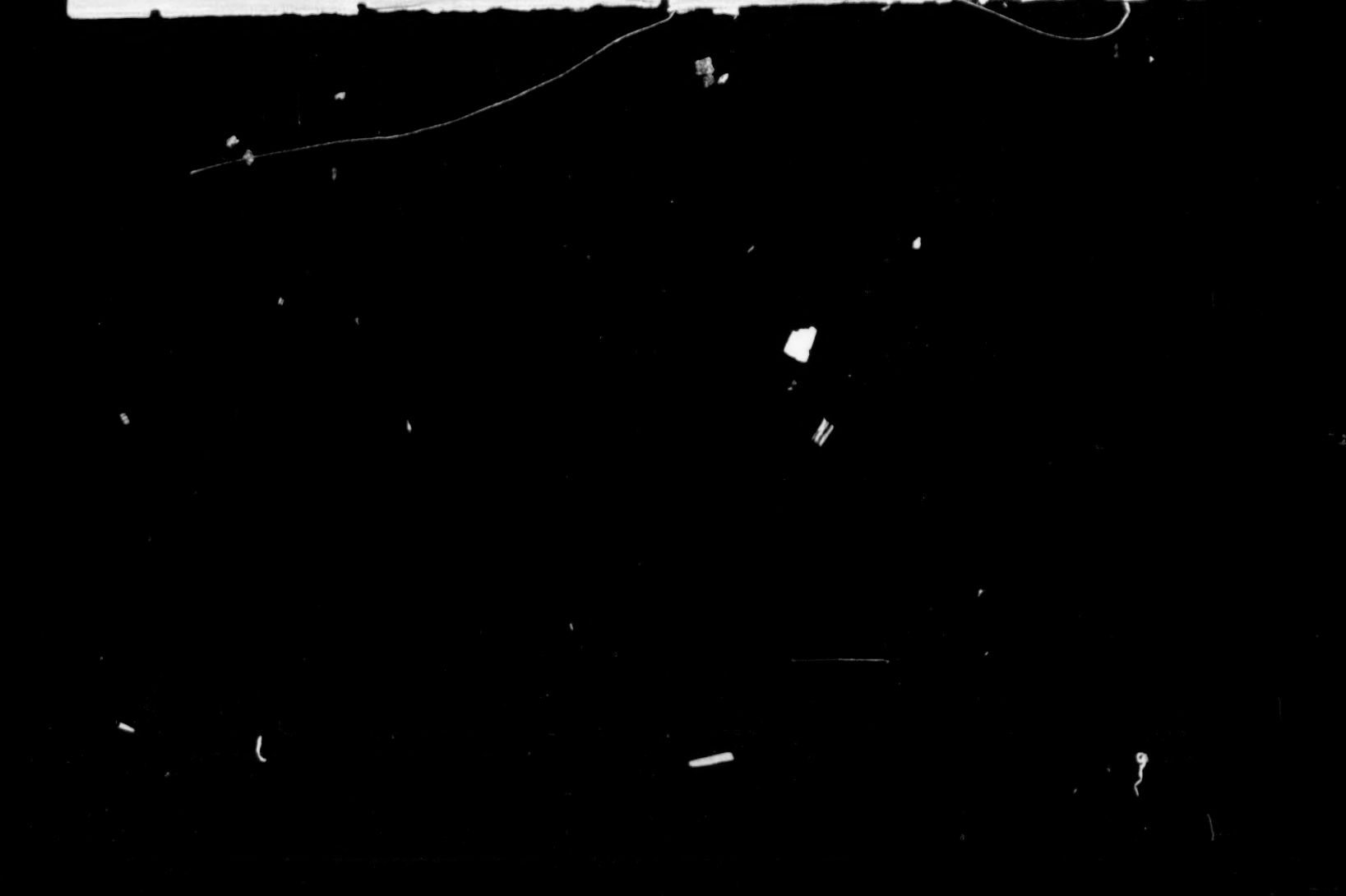
v.

R. M. Blatchford and J. B. Newman, Trustees,

Appellees.

POINTS AND BRIEF OF APPELLEES.

THEODORE CUYLER,
For Appellees.



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v.

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POINTS AND BRIEF OF APPELLEES.

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For Appellees.

In the Supreme Court of the United States.

THE SUSQUEHANNA AND WYOMING VALLEY RAILROAD AND COAL COMPANY, Appellants,

v.

R. M. BLATCHFORD and J. B. NEWMAN, Trustees, Appellees.

Statement of Points and Brief of Argument of Appellees.

I. The demurrer to the jurisdiction of the Court was not well founded, and it was not error in the learned Judges to overrule said demurrer.

The bill is filed by Richard M. Blatchford, a resident of the city of New York, in the State of New York, and a citizen of said State of New York and of the United States, and John B. Newman, a resident of the city of Philadelphia, in the State of Pennsylvania, and a citizen of said State of Pennsylvania and of the United States, trustees, who sue solely for the use of Henry Beckett, a resident of Bordentown, in the State of New Jersey, and an alien and subject of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and of Joseph Loyd, a resident of Elizabeth, in the State of New Jersey, and a citizen of said State of New Jersey and of the United States, against The Susquehanna and Wyoming Valley Railroad and Coal Company,

a corporation created by and organized under the laws of the State of Pennsylvania.

The demurrer presents the point—"that it appears by the complainants' own showing by their said bill of complaint, that one of said complainants, to wit, John B. Newman, is a citizen of the State of Pennsylvania and a resident of the city of Philadelphia," and therefore it is argued that one of the complainants, having a like citizenship with the corporation defendant, the jurisdiction of the Federal Courts cannot be supported.

To this it is answered that the bill avers (Record, p. 1, and also p. 13), "that this suit is brought by the said plaintiffs as trustees as aforesaid, for the sole use, benefit and behoof of the said Henery Beckett and Joseph Loyd," one of whom was an alien and the other a citizen of New Jersey, and both of whom are residents of said State of New Jersey.

It is now well settled by numerous decisions, that the jurisdiction of the Court, when it is founded upon the citizenship of the parties, rests upon that of the *real* and not of the *nominal* parties to the suit.

"The Courts of the United States have jurisdiction in a case *between the citizens of the same State*, if the plaintiffs are only nominal plaintiffs, *for the use of an alien*." Browne *v.* Strode, 5 Cranch, 303.

"By a law of the State of Mississippi, sheriffs are required to give bond *to the Governor* for the faithful performance of their duty. The fact that the Governor and the party sued are citizens of the same State, will not oust the jurisdiction of the Circuit Court of the United States, *provided the party for whose use the suit is brought is a citizen of another State*." McNutt *v.* Bland, 2 Howard, 10.

"The Court will not suffer its jurisdiction in an equity cause to be ousted by the circumstances of the joinder or non-joinder of merely formal parties, who are not entitled to sue or liable to be sued in the United States Courts.' Wormley *v.* Wormley, 8 Wheaton, 422.

"The suit was originally instituted by aliens and a citizen of the United States, as complainants, against the defendants, citizens of the United States. In the progress of the cause, and before a final hearing, the name of the citizen of the United States, who was one of the plaintiffs, was struck out and he was made a defendant by the Court. It was held: *The substantial parties, plaintiffs, those for whose benefit the decree is sought*, are aliens, and the Court has original jurisdiction between them and all the defendants. But they prevented the exercise of this jurisdiction by uniting with themselves a person between whom and one of the defendants the Court could not take jurisdiction; strike out his name as a complainant and the impediment is removed to the exercise of that original jurisdiction which the Court possessed between the alien parties and all the citizens defendants. There is no objection, founded on convenience or law, to this course." Conoly *v.* Taylor, 2 Peters, 556.

See also Irvine *v.* Lowry, 14 Peters, 293, where p. 300, the doctrine of Browne *v.* Strode, 5 Cranch, 303, is strongly reaffirmed in the learned opinion of the Court, delivered by Justice Baldwin.

In view of these and of other authorities which might be cited, it is apparent that the jurisdiction of the Circuit Court is founded upon the citizenship of the *real* and not of the *nominal* parties to the suit. It is to be tested by ascertaining who are the parties beneficially interested; in whose favor and against whom will the final decree be *actually* made.

It is manifest that in this case nothing can be actually decreed in favor of Mr. Newman, the party referred to in the demurrer. Both he and Mr. Blatchford, his co-trustee, are in the language of Judge Baldwin, in Irvine *v.* Lowry, 14 Peters, 300, "the mere instruments or conduits through whom the legal right of the real plaintiff could be asserted;"

and in this case as in that, "the person to whom the debt was (is) due was (is) properly considered as the only party plaintiff in the action."

That Mr. Newman is a nominal and not a real party to the suit, is apparent not only from the fact that he is not beneficially interested in its results, but also from the fact that the rights of those who are thus interested are in no degree dependent upon his being a party to the proceeding. If he should die, or if he should decline further to execute the trust, the right of Mr. Beckett and Mr. Loyd to proceed upon the mortgage, and to demand *the proceeds of its entire lien*, would not be abated or diminished in the least degree.

II. The pleadings present for the consideration of the Court: A Bill, an Answer, and a Replication.

The bill avers, and the answer admits the essential facts to sustain the decree. No proof whatever was offered to support the various matters set up in the answer in avoidance of the liability of the Corporation defendant for the payment of the amount claimed in the bill to be due to the plaintiffs.

Unsupported as these extraordinary averments of the answer are, even by a proper affidavit to the answer itself, left wholly unsubstantiated by a word of evidence taken in the cause, and contradicted as the most important statements are by other statements made in the same answer, it is evident that these charges are as incapable of proof as they are in fact unproven.

The bill avers the creation of the mortgage—the issuing of the bonds—the fact that three hundred and twenty-eight are now outstanding, of which two hundred and fifty are held by Henry Beckett, and seventy-eight by Joseph Loyd, that their coupons remain overdue, and unpaid since the first day of December, 1866, and that their payment has been duly demanded.

These are all the facts requisite to support a decree, and an analysis of the answer will show that each of the several averments of the bill is in effect admitted to be true.

The answer closes with a distinct offer "that if this Honorable Court should be of the opinion that *notwithstanding the matters of defence set forth by these defendants in this answer* there was such default in the payment of interest coupons held by complainants and secured by said mortgage, as entitles said complainants to any relief in equity, then these defendants offer to pay, or cause to be paid, to said complainants, the amount of such coupons and interest warrants as are overdue, together with such damages," &c.

Not a word of proof was offered to sustain "the matters of defence" set forth in the answer, and this offer must therefore fairly be considered as an admission of the liability asserted by the bill, and an offer to submit to a decree in pursuance of its prayer.

The decree extended only to the payment of the coupons with interest and costs, if such payment should be made within one month after its date.

In view of the nature of the affidavit to the answer, and of the remarkable contradictions of many of its statements by other statements of the same paper the Court would be justified in giving but little weight to any denial contained in it of any averment of the bill.

THEODORE CUYLER,
For Appellee.